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**OF**  
**NOVA SCOTIA**  
**2023**

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**Revised Statutes of Nova Scotia**  
**2023**

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CHAPTER C-45

**An Act Relating to the Ownership  
of Individual Units in Multi-unit Buildings**

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**Short title**

1 This Act may be cited as the *Condominium Act*. R.S., c. 85, s. 1.

**Purpose**

2 The purpose of this Act is to facilitate the division of land into parts that are to be owned individually, and parts that are to be owned in common, to provide for the use and management of such properties and to expedite dealings therewith, and this Act is to be construed in a manner to give the greatest effect to these objects. R.S., c. 85, s. 2.

**Interpretation**

- 3 (1) In this Act,
- “accepted for registration” means accepted for registration by the Registrar in accordance with this Act;
  - “board” means the board of directors of a corporation;
  - “buildings” means the buildings, if any, included in a property;
  - “bylaw” means a bylaw of a corporation;
  - “claim” includes a right, title, interest encumbrance or demand of any kind affecting land, but does not include the interest of an owner in the owner’s unit and common interest;
  - “common elements” means all the property except the units;
  - “common expenses” means the expenses incurred in the performance of the objects and duties of a corporation and any expenses specified as common expenses in a declaration;
  - “common interest” means the interest in the common elements appurtenant to a unit;
  - “contingency fund” means a fund established by a corporation to pay common expenses of the corporation that may exceed the corporation’s operating budget;
  - “corporation” means a corporation incorporated by this Act;
  - “Court” means the Supreme Court of Nova Scotia;
  - “declarant” means a person who owns the freehold estate in the land described in the description and who submits for registration pursuant to this Act a declaration and description that are registered pursuant to this Act, and includes a successor or assignee of that person, but does not include a purchaser in good faith of a unit who pays fair market value or a successor or assignee of the purchaser;

“declaration” means the declaration specified in Section 11, and includes any amendments;

“description” means the description specified in Section 12 as amended from time to time;

“encumbrance” means a claim that secures the payment of money or the performance of any other obligation, and includes a mortgage and a lien;

“exclusive-use common element” means a common element that is assigned in the declaration to a specific unit or units for the exclusive use of the owners of such unit or units;

“Minister” means the Minister of Service Nova Scotia;

“owner” means the owner or owners of the freehold estate or estates in a unit and common interest, but does not include a mortgagee unless in possession;

“prescribed” means prescribed by the regulations;

“property” means the land and interests appurtenant to the land described in the description, and includes any land and interests appurtenant to land that are added to the common elements;

“proposed unit” means land described in an agreement of purchase and sale that provides for delivery to the purchaser of a deed or other conveyance capable of being registered after a declaration and description relating to the property, including the land, have been accepted for registration;

“registered” means registered pursuant to the *Land Registration Act* or the *Registry of Deeds Act*;

“Registrar” means the Registrar of Condominiums;

“report on title” means a statement of registered and recorded interests that has been issued under the *Land Registration Act* or any other proof satisfactory to the Registrar;

“submitted for registration” means submitted for registration to the Registrar in accordance with this Act;

“surveyor” means a person authorized to practise surveying or to make a survey in the Province;

“tenant” means a person who has entered into an agreement with an owner to possess or occupy a residential unit in a corporation and has paid or agreed to pay rent to the owner;

“unit” means a part or parts of the land included in the description and designated as a unit by the description, and comprises the space enclosed by its boundaries and all the material parts of the land within this space in accordance with the declaration and description.

(2) For the purpose of this Act, the ownership of land includes the ownership of space.

(3) In this Act, a person is the occupant of a unit if that person is, pursuant to an agreement, including a lease or a sublease, lawfully in possession of

the unit but is not an owner of the unit. R.S., c. 85, s. 3; 1998, c. 28, s. 1; 2001, c. 6, s. 100; 2009, c. 10, s. 1; 2022, c. 10, s. 1.

## PART I

### ADMINISTRATION

#### Administration of Act

**4 (1)** The Minister shall appoint a Registrar of Condominiums, who has the functions and duties set out in this Act and the regulations and such other functions and duties pursuant to this Act and the regulations as the Minister may determine.

**(2)** The Minister may, in the absence or incapacity of the Registrar or when the office of the Registrar is vacant, authorize another person to act in the Registrar's stead.

**(3)** The Minister may appoint one or more deputy registrars as required to assist the Registrar in the performance of the Registrar's duties.

**(4)** A deputy registrar may perform any of the duties and exercise any of the powers of the Registrar as directed by the Registrar.

**(5)** Such inspectors, clerks and other persons shall be appointed as are necessary to assist the Registrar in performing the Registrar's functions.

**(6)** A person appointed or authorized to act pursuant to subsections (1) to (5) must be employed pursuant to the *Civil Service Act* and that Act applies to that person.

**(7)** With the approval of the Minister, the Registrar may engage solicitors, engineers, surveyors and other professionally or technically qualified persons. R.S., c. 85, s. 4; 2009, c. 10, s. 2; 2022, c. 10, s. 2.

#### Functions of Registrar

**5** It is the function of the Registrar and the Registrar has power to

(a) examine all documents, plans and other materials submitted to the Registrar in accordance with this Act or the regulations;

(b) perform the duties and functions and exercise the powers imposed or conferred upon the Registrar by this Act or the regulations;

(c) perform such other functions as are prescribed by the Minister or by the Governor in Council. R.S., c. 85, s. 5.

## PART II

### REGISTRATION

#### Requirements

**6 (1)** A property may comprise only freehold land and interests, if any, appurtenant to that land.

(2) A declaration and description may be submitted for registration by or on behalf of the owner of the freehold estate in the land described in the description.

(3) A report on title, prepared in accordance with the regulations showing the owner by whom the declaration and description are being submitted for registration as the owner of the freehold interest in the land, must be submitted to the Registrar before the declaration and description are accepted for registration.

(4) There must also be submitted with the declaration and description

(a) a plan of survey of the property, prepared by a surveyor in accordance with the regulations;

(b) proposed bylaws, of the corporation that would be created if the declaration and description are accepted for registration,

(i) governing the management of the property,

(ii) governing the use of units or any of them for the purpose of preventing unreasonable interference with the use and enjoyment of the common elements and other units,

(iii) governing the use of the common elements,

(iv) regulating the maintenance of the units and common elements,

(v) governing the use and management of the assets of the corporation,

(vi) respecting the board,

(vii) specifying the duties of the corporation,

(viii) regulating the assessment and collection of contributions towards the common expenses, and

(ix) respecting the conduct generally of the affairs of the corporation; and

(c) any information that the Registrar thinks is necessary for the purpose of the submission.

(5) There must also be submitted with the declaration and description an appointment in a form acceptable to the Registrar giving the name and address of a recognized agent resident within the Province, service upon whom of any summons, process, notice or other document is deemed to be sufficient service upon the corporation.

(6) Upon acceptance of a declaration and description for registration, the land and the interests appurtenant to the land described in the description are governed by this Act. R.S., c. 85, s. 6; 1998, c. 28, s. 2.

#### **Duties of Registrar**

7 (1) Upon acceptance of all documents, including the declaration and description, required by this Act to be submitted for registration, the Registrar shall

- (a) assign a name to the corporation in accordance with subsection 18(3);
- (b) endorse on each document a certificate of acceptance for registration; and
- (c) deliver a copy of each of the documents so endorsed to
  - (i) the registrar of deeds for the registration district in which the property is located, who shall register or record the documents in accordance with the *Registry of Deeds Act* or the *Land Registration Act*,
  - (ii) the Registrar of Joint Stock Companies, who shall file the same, together with the form of appointment of agent, in accordance with the regulations, and
  - (iii) the owner by whom documents were submitted for registration for the corporation's records.

(2) Notwithstanding subsection (1), the copy of the documents delivered to the Registrar of Joint Stock Companies must not include plans and diagrams. R.S., c. 85, s. 7; 1998, c. 28, s. 3; 2006, c. 16, s. 4; 2009, c. 10, s. 3; 2022, c. 10, s. 3.

#### **Phased-development condominium**

**8** (1) A phased-development condominium is exempt from the subdivision-approval requirements of the *Municipal Government Act* if the phased-development condominium meets the requirements, if any, prescribed by the regulations.

(2) The acceptance for registration of a phase of a phased-development condominium constitutes a subdivision of land and creates a lot as described in the description of that phase.

(3) Upon the acceptance for registration of each subsequent phase of a phased-development condominium, the subsequent phase is consolidated into one lot with all phases of the phased-development condominium previously accepted for registration.

(4) Where a phased-development condominium was accepted for registration before May 30, 2002, a failure to comply with the subdivision-approval requirements of the *Municipal Government Act*, or Chapter 346 of the Revised Statutes, 1989, the *Planning Act*, or a regulation or bylaw made thereunder does not affect the creation of a title or interest in real property conveyed, or purported to have been conveyed, by deed, lease, mortgage or other instrument. 2002, c. 10, s. 2.

#### **Condominium Corporations Register**

**9** (1) Every registrar of deeds shall register only such declarations, descriptions, bylaws, notices of termination and other instruments as may be received from the Registrar.

(2) In any instrument relating to a unit and common interest, other than the description, it is a sufficient description thereof if the name of the corporation and the unit number are included.

(3) Except as otherwise provided by this Act and the regulations, the *Registry of Deeds Act* or the *Land Registration Act*, as the case may be, applies in respect of property governed by this Act. R.S., c. 85, s. 9; 2001, c. 6, s. 100; 2006, c. 16, s. 5; 2009, c. 10, s. 4.

#### Registrar to maintain records

10 The Registrar of Joint Stock Companies shall maintain such records relating to condominium corporations as the Governor in Council may prescribe. R.S., c. 85, s. 10.

### PART III

#### DECLARATION AND DESCRIPTION

##### Contents and amendment of declaration

11 (1) A declaration may not be registered unless it is executed by the owner or owners of the land and interests appurtenant to the land described in the description as shown in the report on title and unless it contains

(a) a statement of intention that the land and interests appurtenant to the land described in the description be governed by this Act;

(b) the consent of all persons

(i) who have registered encumbrances against the land described in the description,

(ii) who have interests appurtenant to the land described in the description, and

(iii) whose land is subject to an easement registered under the *Registry of Deeds Act* or recorded under the *Land Registration Act* in favour of the land described in the description,

which consent may not unreasonably be withheld, or a court order dispensing with consent;

(c) a statement, expressed in percentages allocated to the units, of the proportions of the common interests;

(d) a statement, expressed in percentages allocated to the units, of the proportions in which the owners are to contribute to the common expenses;

(e) a statement, expressed in percentages allocated to the units, of the proportions in which the owners are to have voting rights in the corporation;

(f) a clear explanation of the methodology or formula used to allocate to the units the percentages referred to in clauses (c), (d) and (e); and

(g) a clear explanation of how contributions to the common expenses related to exclusive-use common elements have been allocated to the units.

(2) Where a *lis pendens* has been recorded against the property, the Registrar shall not accept the declaration and description for registration until such time as the Registrar is satisfied the *lis pendens* has been removed from the parcel register and the declarant has provided such other information as the Registrar may require.

(3) In addition to the matters mentioned in subsection (1), a declaration must contain

- (a) a specification of common expenses;
- (b) a specification of any parts of the common elements that are to be used by the owners of one or more designated units and not by all the owners;
- (c) a list of all exclusive-use common elements, if any, together with a list of the units that have been assigned such exclusive-use common elements;
- (d) provisions respecting the occupation and use of the units and common elements;
- (e) provisions restricting gifts, leases and sales of the units and common interests;
- (f) a specification of the number, qualification, nomination, election, term of office, compensation and removal of members of the board, and the meetings, quorum, functions and officers of the board;
- (g) a specification of duties of the corporation consistent with its objects;
- (h) a specification of the duties of the corporation and the rights of the owners if all or part of the property is expropriated;
- (i) a specification of the majority required to make bylaws of the corporation;
- (j) provisions regulating the assessment and collection of contributions towards the common expenses;
- (k) a specification of the majority required to make substantial changes in the common elements and the assets of the corporation;
- (l) a specification of any allocation of the obligations to repair and to maintain the units and common elements;
- (m) a specification of the percentage of substantial damage to the buildings and a specification of the majority required to authorize repairs pursuant to Section 60;
- (n) a specification of the majority required for a sale of the property or of part of the common elements;
- (o) a specification of the voting majority required to permit the corporation to lease part of the common elements;
- (p) a specification of the majority required for the termination of the government of the property by this Act;

- (q) specifications of the boundaries of the unit;
  - (r) a statement of any services, including water and sewage, that are required for the operation of the property but are not provided by a municipality or are not contained within the boundaries of the property;
  - (s) a copy of all applicable easements or any agreements respecting the provision of services referred to in clause (r);
  - (t) any other matters concerning the property.
- (4) A declaration filed after September 1, 2011, must contain a description of a standard unit for each class of units.
- (5) A declaration may contain a provision that divides the units into two or more classes.
- (6) Where a declaration divides the units into classes pursuant to subsection (5),
- (a) the declaration may contain more than one provision pursuant to any one or more of clauses (1)(a) to (e) and (2)(a) to (t) and limit the application of each of the provisions to one or more of the classes;
  - (b) the corporation may make more than one set of bylaws and limit the application of each set of bylaws to one or more of the classes.
- (7) The declaration may be amended only with the consent of the owners of at least 80% of the common elements.
- (8) Notwithstanding subsection (7), the Registrar may accept for registration an amendment to the declaration without the consent referred to in that subsection in order to correct a grammatical, clerical, typographical or printing error or an error in mathematics.
- (9) Where an amendment is made pursuant to subsection (8), the Registrar shall deal with the amendment as provided in Section 7 and clauses (11)(a) and (c) do not apply to the amendment.
- (10) Unless otherwise specified in a declaration, the exterior surface referred to in the boundary of a unit is deemed to be the visible surface.
- (11) When a declaration is amended, the corporation shall provide, in a form satisfactory to the Registrar,
- (a) proof as to which persons are the owners of the units;
  - (b) a copy of the amendment; and
  - (c) proof of consent of the owners representing at least 80% of the common elements.
- (12) Until a copy of the amendment is registered, the amendment is ineffective.

(13) Upon submission and acceptance for registration, the Registrar shall deal with the amendment as provided in clauses 7(1)(b) and (c).

(14) No provision contained in a declaration pursuant to clause (3)(d) or (e) may discriminate because of any characteristic referred to in clauses 5(1)(h) to (x) of the *Human Rights Act*. R.S., c. 85, s. 11; 1998, c. 28, s. 5; 2009, c. 10, s. 5; 2010, c. 46, s. 1; 2022, c. 10, s. 4.

### Contents and approval of description

12 (1) A description must contain the following, prepared in accordance with the regulations:

(a) a plan of survey showing the perimeter of the horizontal surface of the land and the perimeter of any buildings;

(b) structural plans of any buildings;

(c) architectural plans for any buildings;

(d) a specification of the boundaries of each unit by reference to the buildings or, if there are no buildings, by reference to the appropriate coordinate monument;

(e) diagrams showing the shape and dimensions of each unit and the approximate location of each unit in relation to the other units and the buildings, if any;

(f) a certificate of a person who is authorized to practise architecture in the Province that all buildings have been constructed substantially in accordance with the architectural plans and, if there are structural plans, a certificate of a person who is authorized to practise engineering, as defined in the *Engineering Profession Act*, that all buildings have been constructed substantially in accordance with the structural plans;

(g) if no buildings are included in a property, a certificate of a surveyor that the horizontal boundaries of the units have been monumented on the ground in the prescribed manner and that the diagrams of the units are substantially accurate and substantially in accordance with the monuments so placed; and

(h) a description of any interests appurtenant to the land that are included in the property.

(2) A description may not be accepted for registration by the Registrar unless it satisfies the requirements of this Act and the regulations.

(3) The description may be amended only with the consent of the owners of at least 80% of the common elements.

(4) Notwithstanding subsection (3), the Registrar may accept for registration an amendment to a description that is registered without the consent referred to in that subsection in order to correct a grammatical, clerical, typographical or printing error or an error in mathematics and shall deal with the amendment as provided in Section 7. R.S., c. 85, s. 12; 1998, c. 28, s. 6; 2009, c. 10, s. 6.

**Exception**

**13 (1)** Notwithstanding Sections 11 and 12, the Registrar shall accept for registration a declaration and description of a phased-development condominium if the declaration and description contain the information prescribed by the regulations.

**(2)** Subsection (1) does not apply in respect of a condominium accepted for registration before January 21, 1997. 1996, c. 33, s. 1.

**Phased-development exception**

**14 (1)** A declaration and description for a phased development may not be accepted for registration unless

(a) the property reserved for future phases is bound by a covenant, in a form and manner prescribed by the regulations, that the property

(i) can only be used for a purpose that is materially similar to the purpose stated in the declaration and description that is being submitted for acceptance for registration, and

(ii) satisfies any applicable municipal land-use bylaw or development agreement; and

(b) at the time of acceptance for registration of the declaration, the declarant provides the Registrar with a document in registrable or recordable form as required by the *Land Registration Act* assigning the interest holder for the restrictive covenant from the declarant to the corporation, to take effect on acceptance for registration of the declaration.

**(2)** Where the declarant does not proceed with a subsequent phase or phases, the covenant in subsection (1) may be removed with the consent of owners representing at least 80% of the common elements in the corporation in the completed phase or phases. 2009, c. 10, s. 7.

**Further exception**

**15 (1)** Notwithstanding Sections 11 and 12, the Registrar shall accept for registration a declaration and description of a bare-land condominium or a mixed-use condominium if the declaration and description contain the information prescribed by the regulations.

**(2)** Subsection (1) does not apply in respect of a condominium accepted for registration before February 16, 2000. 1998, c. 28, s. 7.

**Registrar may require information**

**16** The Registrar may require from any person such information that is necessary for the administration of this Act respecting any document that is required to be filed or registered under this Act. 1998, c. 28, s. 7.

**Confirmation of services and utilities**

**17** The declarant shall provide to the Registrar any other document or confirmation that the Registrar considers necessary to ensure that a proposed corpo-

ration can exist with access to water and sewage services or such other services and utilities as may be prescribed by the regulations, if such services or utilities are necessary for the intended use of the development as set out in the declaration and description. 2009, c. 10, s. 8.

#### PART IV

#### THE CORPORATION

##### Creation and name

**18 (1)** The acceptance for registration of a declaration and description creates a corporation whose members are the owners.

**(2)** Where a declaration and description are accepted for registration, each proposed bylaw that was submitted to the Registrar with the description and declaration is a bylaw of the corporation that is created by the acceptance of the declaration and description for registration, until it is repealed, replaced or amended pursuant to Section 38.

**(3)** Where a declaration and description are accepted for registration, the Registrar shall assign a name to the corporation comprising the following components:

- (a) the district name of the registry district in which the property is located;
- (b) the words "Condominium Corporation"; and
- (c) the abbreviation "No." together with a number that is the next available consecutive number in the list of condominium corporations for that registry district maintained by the Registrar in accordance with the regulations.

**(4)** The *Companies Act*, *Corporations Miscellaneous Provisions Act*, *Corporations Registration Act*, *Corporations Tax Act* and *Societies Act* do not apply to the corporation. R.S., c. 85, s. 13; 1998, c. 28, s. 8.

##### Objects and powers

**19 (1)** The objects of the corporation are to manage the property and any assets of the corporation.

**(2)** Notwithstanding subsection (5), a corporation may not enter into an agreement for the management of the corporation that has a term that exceeds two years.

**(3)** Notwithstanding any term of an agreement between a corporation and a person for the management of the corporation that was entered into before the board of directors was elected in accordance with this Act, the agreement may be terminated upon 60 days notice without any legal liability to the corporation.

**(4)** Notwithstanding subsection (2), upon an affirmative vote of owners representing at least 66  $\frac{2}{3}$ % of the common elements that has occurred after

the board of directors was elected in accordance with this Act authorizing a contract longer than two years, the corporation may enter into a management contract in excess of two years.

(5) The corporation has all corporate powers and all corporate capacities necessary to enable it to do all such acts and things as are incidental or conducive to or consequential upon the attainment of its objects as set out in subsection (1), including, without limiting the generality of the powers and capacities of the corporation, but subject to this Act, the declaration and the bylaws, the power to lease any part of the common elements.

(6) With the consent of owners representing at least 66⅔% of the common elements, a corporation may

(a) acquire by purchase, gift, devise, bequest or any other means personal property and sell, mortgage, hypothecate, pledge, convey or otherwise deal with such personal property, including any future right to be paid money as a result of a levy made pursuant to this Act, in order to secure repayment of money borrowed by it or the payment or performance of any of its obligations;

(b) borrow money;

(c) grant leases of the common elements;

(d) subject to Section 55, make capital expenditures;

(e) subject to the regulations, consolidate into one unit two or more adjacent units that are included in the property that is managed by the corporation;

(f) subject to the regulations, divide one unit that is included in the property that is managed by the corporation and was previously consolidated under clause (e) into two or more units;

(g) levy special assessments for extraordinary common-element expenses.

(7) Notwithstanding subsection (6), a corporation is not required to obtain approval of the owners representing at least 66⅔% of the common elements to acquire or dispose of personal property if the personal property has a market value of less than

(a) an amount set out in the corporation's bylaws; or

(b) where the bylaws are silent as to an amount, the lesser of

(i) \$2,500, and

(ii) five per cent of the corporation's annual budget.

(8) With the consent of owners of at least 80% of the common elements, a corporation may

(a) acquire real property by purchase, gift, devise, bequest or any other means;

(b) sell, mortgage, convey or otherwise deal with any such real property;

(c) grant or discharge easements affecting the common elements.

(9) No real property or interest in real property acquired or disposed of by a corporation may be incorporated into or removed from the common elements, as the case may be, until

(a) proof of the necessary consents and such other information as the Registrar may require has been provided; and

(b) amended survey plans and legal descriptions have been accepted for registration.

(10) Where consent of the owners of the common elements has been obtained in accordance with this Act and the execution of a document by an owner is not otherwise required by this Act, the board may, on behalf of the owners,

(a) accept a grant of easement or covenant benefiting the common elements;

(b) accept a discharge of an easement burdening the common elements;

(c) execute any document required to complete a transaction contemplated by subsection (6) or (8);

(d) execute any document required to be filed with the Registrar.

(11) A lease granted pursuant to clause (6)(c) has the same effect as if it were granted by all the owners of the common elements to which the grant of lease relates.

(12) Where units are consolidated pursuant to clause (6)(e),

(a) the proportions of the common interests with respect to the consolidated unit is equal to the proportions of the common interest with respect to all the units that were consolidated;

(b) the proportion in which the owner of the consolidated unit is to contribute to the common expenses is equal to the proportion in which all the owners of the units that were consolidated were to contribute to the common expenses; and

(c) the proportion in which the owner of the consolidated unit is to have voting rights in the corporation is equal to the proportion in which all the owners of the units that were consolidated had voting rights in the corporation,

and the consolidation takes effect when the certificate of consolidation, as prescribed by the regulations, is filed with and accepted by the Registrar. R.S., c. 85, s. 14; 1998, c. 28, s. 9; 2009, c. 10, s. 9; 2022, c. 10, s. 5.

### Quorum

**20 (1)** A quorum for the transaction of business at a meeting of the members of the corporation is the presence, either in person or by proxy, of the owners of at least 30% of the common elements.

(2) No business may be transacted at a meeting of the members of the corporation unless a quorum is present at the commencement of business. 1998, c. 28, s. 10.

#### **Virtual meetings**

21 Subject to the corporation's declaration and bylaws, a meeting of the members of a corporation may be held entirely or partially by telephonic or electronic means and a member who, through those means, votes at the meeting or establishes a communications link to the meeting is deemed, for the purpose of this Act, to be present at the meeting. 2022, c. 7, s. 5.

#### **Initial board of directors**

22 (1) The declarant shall notify, in the prescribed form, the Registrar of the names of the board members appointed by the declarant at the time the declaration and description are submitted for registration and such people are the initial board of the directors of the corporation.

(2) The board of directors of a corporation is elected at a general meeting of the members, which meeting must be held within the earlier of one year after the date on which the declarant sells the first unit or 45 days of the date in which the declarant ceases to own more than 50% of the units. 2009, c. 10, s. 10; 2022, c. 10, s. 6.

#### **No acquisition of interest or right until board of directors elected**

23 (1) Notwithstanding Section 19, a corporation may not acquire an interest or a right in a unit, other real property or personal property, except for no consideration, until a board of directors has been elected in accordance with this Act.

(2) Where a purchase and sale agreement for an interest or a right in a unit, other real property or personal property was executed before May 23, 2023, subsection (1) does not apply. 2022, c. 10, s. 7.

#### **Board of directors**

24 (1) The affairs of the corporation are managed by a board of directors, consisting of three persons or such greater number as the declaration or bylaws may provide, elected by the members of the corporation.

(2) Notwithstanding subsection (1), where the declarant has not ceased to own all the units, the board of directors is chosen in the following manner:

(a) the declarant appoints that proportion of the total number of directors that the number of units still owned by the declarant bears to the total number of units in the property, except that where the number so arrived at is not a whole number, the declarant appoints that number of directors that is equal to the lower of the nearest two whole numbers;

(b) the members of the corporation, other than the declarant, elect the remaining directors.

(3) Notwithstanding subsection (2), that subsection does not apply where

(a) at a meeting of the members of the corporation at which a board of directors is chosen, a resolution is passed by the affirmative vote of at least  $66\frac{2}{3}\%$  of the members present in person or by proxy, that the entire board be elected by the members of the corporation; or

(b) the number arrived at by multiplying the total number of directors by the percentage of the units that the declarant has not ceased to own is less than one half.

(4) The term of the members of the board is three years or such lesser period as the declaration or bylaws may provide, but the members of the board may continue to act until their successors are elected, and members are eligible for re-election.

(5) Where a vacancy in the membership of the board occurs, a new member must be elected by the members of the corporation.

(6) Notwithstanding subsection (5), where a vacancy in the membership of the board occurs and, at the time the vacancy is filled, subsection (2) applies, the vacancy must be filled in a manner that would result in the proportion of the members of the board who are appointed by the declarant being the same as the proportion of members of the board who would have been appointed by the declarant if a new board had been chosen in accordance with subsection (2) at the time the vacancy was filled.

(7) A quorum for the transaction of business is a majority of the members of the board or such greater number as the declaration or bylaws may provide.

(8) The acts of a member of the board or an officer of the board are valid notwithstanding any defect that may afterwards be discovered in that person's election or qualifications.

(9) The declaration or the bylaws may specify and regulate the qualifications, nomination, election, compensation and removal of members of the board, and the meetings, functions and officers of the board. R.S., c. 85, s. 15; 1998, c. 28, s. 11.

#### Qualifications

**25** (1) No person may be elected to the office of director or hold office as a director if that person

(a) has not attained the age of majority; or

(b) is not an owner.

(2) Where the declarant is entitled to appoint a person as a director, clause (1)(b) does not apply with respect to that appointment. 1998, c. 28, s. 12.

**Removal of director**

**26 (1)** A person may be removed from the office of director by a majority of the votes cast in favour of the removal at a meeting of the members at which the voting is on the basis of one vote per member.

**(2)** Where a vote is being taken pursuant to subsection (1), the declarant as a member has one vote. 1998, c. 28, s. 12.

**Effect of defect in election or appointment**

**27** No act of a person is invalid by reason only of a defect in the election or appointment of that person as a director or officer or the lack of any qualification for that office. 1998, c. 28, s. 12.

**Duties**

**28 (1)** Every director and officer of the corporation shall, in exercising the powers and discharging the duties of office,

- (a) act honestly and in good faith;
- (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances; and
- (c) act in the best interest of the corporation when discharging the duties of the director's or officer's office.

**(2)** A director is not liable under subsection (1) if the director relies in good faith upon

- (a) financial statements of the corporation that the auditor, in a written report, an officer of the corporation or a manager under an agreement for the management of the property represents to the director as presenting fairly the financial position of the corporation in accordance with generally accepted accounting principles; or
- (b) the report or opinion of a person whose profession lends credibility to the report or opinion. 1998, c. 28, s. 12; 2009, c. 10, s. 11.

**Indemnification of directors and officers**

**29** The bylaws of the corporation may provide that every director and officer of the corporation and that person's heirs, executors, administrators and other legal personal representatives may from time to time be indemnified and saved harmless by the corporation from and against

- (a) any liability and all costs, charges and expenses that the director or officer sustains or incurs in respect of any action, suit or proceeding that is proposed or commenced against that person for or in respect of anything done or permitted by that person in respect of the execution of the duties of office; and
- (b) all other costs, charges and expenses that person sustains or incurs in respect of the affairs of the corporation. 1998, c. 28, s. 12.

**Duty to disclose**

**30 (1)** A director of the corporation who has, directly or indirectly, an interest in a contract or transaction to which the corporation is a party or a proposed contract or transaction to which the corporation will be a party, shall disclose in writing to the corporation the nature and extent of the interest.

**(2)** A disclosure of an interest in a contract or transaction or a proposed contract or transaction is sufficient if it is a general notice disclosing that the director

(a) is also a director or officer of a party to a contract or transaction or a proposed contract or transaction with the corporation; or

(b) has a material interest in a party to a contract or transaction or a proposed contract or transaction with the corporation.

**(3)** Subsection (1) does not apply to a contract or transaction unless both it and the director's interest are material.

**(4)** Notwithstanding subsection (2), where the contract or transaction or proposed contract or transaction to which subsection (1) applies involves the purchase or sale of real or personal property by or to the corporation, the director shall disclose

(a) the cost of the property to the purchaser; and

(b) where acquired by the seller within five years before the date of the contract or transaction or the proposed contract or transaction, the cost of the property to the seller, to the extent to which the interest or information is within the director's knowledge or control.

**(5)** The disclosure required by this Section must be made

(a) at the meeting of the directors at which the contract or transaction or the proposed contract or transaction is first considered;

(b) where the director is not, at the date of the meeting, interested in the contract or transaction or the proposed contract or transaction, at the next meeting of the directors held after the director became interested;

(c) where the director becomes interested in the contract or transaction after it is entered into, at the first meeting of the directors held after the director becomes so interested; or

(d) where the contract or transaction or the proposed contract or transaction is one that, in the ordinary course of the business of the corporation, would not require approval by the directors or owners, at the first meeting of the directors held after the director becomes aware of the contract or transaction or the proposed contract or transaction.

**(6)** The board shall enter the disclosure made by a director pursuant to this Section in the minutes of the meeting of the board at which the disclosure was made.

(7) The director shall not vote or be counted in the quorum on a vote with respect to a contract or transaction or a proposed contract or transaction to which subsection (1) applies unless the interest of the director in it

(a) is or would be limited solely to liability insurance against liability incurred as a result of acting as a director or officer of the corporation or remuneration as a director, officer or employee of the corporation; or

(b) arises or would arise solely because the director is a director, officer or employee of the corporation, if the director has been appointed to the first board by the declarant.

(8) A director who complies with this Section and who is acting honestly and in good faith at the time the contract or transaction is entered into is not accountable to the corporation or the owners for any profit or gain realized from the contract or transaction by reason only of holding the office of director and the contract or transaction is not voidable by reason only of the interest of the director in it if

(a) the contract or transaction is confirmed or approved by at least two thirds of the votes cast at a meeting of the owners duly called for that purpose; and

(b) the nature and extent of the interest of the director in the contract or transaction are declared and disclosed in reasonable detail in the notice calling the meeting. 1998, c. 28, s. 12.

#### **Appointment of recognized agent**

31 The board, whenever it considers advisable, may appoint a recognized agent in substitution of the agent previously appointed by submitting for registration a form of appointment in the prescribed form under its corporate seal, and the Registrar shall accept any such form of appointment for registration and shall file the same duly endorsed with the Registrar of Joint Stock Companies in accordance with the regulations. R.S., c. 85, s. 16.

#### **Items to be provided to corporation**

32 Where the declarant ceases to own a majority of the units in the property, the declarant shall provide to the corporation, without charge,

(a) the seal of the corporation;

(b) the minute book for the corporation, containing the most current copies of the declaration, bylaws, rules and regulations and any amendments thereto;

(c) a copy of any agreement entered into by the corporation or the declarant or the representatives of the declarant on behalf of the corporation, including any management contract, deed, lease or licence;

(d) any existing warranty or guarantee for any equipment, fixture or chattel included in the sale of either the units or common elements that is not protected by a warranty or guarantee given directly to a unit purchaser;

(e) any as-built architectural, structural, engineering, mechanical, electrical and plumbing plans;

- (f) any original specifications indicating thereon all material changes;
  - (g) any plans for underground site service, site grading, drainage and landscaping, together with any cable-television drawings;
  - (h) any plans and information not mentioned in clauses (e), (f) and (g) but relevant to the future repair or maintenance of the property;
  - (i) the name, address and telephone number of the declarant and any subcontractor that performed work on the property;
  - (j) the name, address and telephone number of any architect or engineer responsible for overseeing the designing or construction of the property;
  - (k) all documents pertaining to the fire, sound and insulation rating of all structures on the property;
  - (l) a description and copy of all warranties, including warranties for common elements and units;
  - (m) all information pertaining to bank, trust company, or credit union accounts holding the reserve fund and any other fund of the condominium;
  - (n) copies of all financial statements prepared respecting the reserve or other fund;
  - (o) a list of all the units in the property, an indication for each unit whether it is sold or unsold and the names and addresses of the unit owners for sold units;
  - (p) a list of all units in the property that have not been sold and are subject to an executed purchase and sale agreement;
  - (q) a list of all units in the building that are being rented, together with the names of the renters and copies of any applicable rental agreements;
  - (r) a complete copy of documents, including any amendments, filed with the Registrar to obtain registration under this Act, that are not otherwise required to be disclosed under this subsection; and
  - (s) any other items that the Governor in Council may prescribe.
- R.S., c. 85, s. 17; 1998, c. 28, s. 13; 2009, c. 10, s. 12.

### **Duties of corporation**

**33 (1)** In this Section, “records” includes financial records, minutes of meetings of the members of the corporation and its board, the declaration, bylaws and rules, all items referred to in Section 32, any reserve-fund study, all agreements entered into by the corporation, disclosures of conflicts of interest and all other records that are specified in the bylaws of the corporation.

**(2)** The corporation shall keep adequate records, and any member of the corporation may inspect the records on reasonable notice and at any reasonable time.

**(3)** The corporation shall keep all financial records for at least six years from the end of the last fiscal period to which they relate, in addition to satis-

fyng the requirements of any taxing authority of the Province, Canada or any other jurisdiction to which the corporation is subject.

(4) Upon receiving a written request and reasonable notice, the corporation shall permit any owner or an agent of an owner, duly authorized in writing, to examine the records of the corporation at any reasonable time.

(5) The corporation shall, within a reasonable time, provide a copy of any record to a person examining the records, if the person so requests and pays a reasonable fee to compensate the corporation for the labour and copying charges.

(6) The corporation has a duty to effect compliance by the owners with this Act, the declaration and the bylaws.

(7) Each member of the corporation, and each person having an encumbrance against a unit and common interest, has the right to the performance of any duty of the corporation specified by this Act, the declaration and the bylaws. R.S., c. 85, s. 18; 1998, c. 28, s. 14.

#### **Sharing in assets of corporation**

34 The members of the corporation share the assets of the corporation in the same proportions as the proportions of their common interests in accordance with this Act, the declaration and the bylaws. R.S., c. 85, s. 19; 1998, c. 28, s. 15.

#### **Judgment against corporation**

35 (1) A judgment for the payment of money against the corporation is also a judgment against each owner at the time the cause of action arose for a portion of the judgment determined by the proportions specified in the declaration for sharing the common expenses.

(2) Any such owner may be discharged from such a judgment by payment to the claimant of a portion of the judgment debt and costs determined by the proportions specified in the declaration for sharing the common expenses, and upon such payment being made, the holder of the judgment shall give to the owner a discharge in accordance with the regulations. R.S., c. 85, s. 20.

#### **Corporation may bring action**

36 Any action with respect to the common elements may be brought by the corporation and a judgment for the payment of money in favour of the corporation in such an action is an asset of the corporation. R.S., c. 85, s. 21.

#### **Winding up**

37 (1) Where the owners and the property cease to be governed by this Act, an order for winding up is deemed to have been made and registered under the *Companies Winding Up Act* and, subject to the provisions of subsection (2), that Act applies with necessary changes to the winding up of the corporation.

(2) The following provisions apply to the winding up of a condominium corporation:

- (a) the liquidator or liquidators or some of them may be appointed from the members of the board;
- (b) the Court may make any order that it considers just and equitable concerning the management of the property before sale, including any order relating to the payment by the owners of municipal taxes and of expenses that would have been common expenses had the property not ceased to be governed by this Act;
- (c) the assets of the corporation must be used to pay any claims for the payment of money against the corporation; and
- (d) the remainder of the assets of the corporation must be distributed among the members of the corporation in the same proportions as the proportions of their common interests. R.S., c. 85, s. 22.

### Bylaws

**38 (1)** The corporation, by an affirmative vote of members who own at least 60% of the common elements, may make bylaws

- (a) governing the management of the property;
- (b) governing the use of units or any of them for the purpose of preventing unreasonable interference with the use and enjoyment of the common elements and other units;
- (c) governing the use of the common elements;
- (d) regulating the maintenance of the units and common elements;
- (e) governing the use and management of the assets of the corporation;
- (f) respecting the board;
- (g) specifying duties of the corporation;
- (h) regulating the assessment and collection of contributions towards the common expenses;
- (i) respecting the conduct generally of the affairs of the corporation.

**(2)** The bylaws must be reasonable and consistent with this Act, the *Human Rights Act* and the declaration.

**(3)** Bylaws adopted by a corporation pursuant to subsection (1) are not required to contain provisions found in the corporation's declaration, but may provide additional details, if such details are not inconsistent with the declaration.

**(4)** The Governor in Council may prescribe standard sets of bylaws for corporations and, where there are no bylaws made by a corporation pursuant to this Act that are in effect, the standard set of bylaws so prescribed for that corporation are the bylaws of that corporation.

(5) The Governor in Council may prescribe standard bylaws pursuant to subsection (4) for different classes of corporations and prescribe different standard bylaws for different classes of corporations.

(6) Where a bylaw is made by the corporation, the corporation shall submit for registration a copy of the bylaw together with a certificate in prescribed form executed by the corporation that the bylaw was made in accordance with this Act, the declaration and the bylaws, and the Registrar shall accept such bylaw and certificate for registration.

(7) Upon acceptance for registration, the Registrar shall deal with the bylaw as provided in clauses 7(1)(b) and (c) but, until the copy and certificate are accepted for registration, the bylaw is ineffective.

(8) No bylaw or amendment or repeal thereof is capable of operating to prohibit or restrict the devolution of a unit, or any transfer, lease, mortgage or other dealing therewith, or to destroy or modify any easement implied or created pursuant to this Act. R.S., c. 85, s. 23; 1998, c. 28, s. 16; 2009, c. 10, s. 13; 2022, c. 10, s. 8.

#### **Rules for use of common elements**

**39** (1) The bylaws may provide for the making of rules by the owners respecting the use of the common elements for the purpose of preventing unreasonable interference with the use and enjoyment of the units and common elements.

(2) The board of directors may propose new rules or amend or repeal existing rules respecting the use of the common elements to promote safety and security of the members and property or to prevent unreasonable interference with the use and enjoyment of the units and common elements.

(3) A rule proposed to be made, amended or repealed by the board of directors is not effective until such time as the board provides the members of the corporation with notice of the proposed rule in the prescribed form, which notice must include a form to allow the unit member to object to the rule.

(4) Where the board does not receive a notice of objection within 10 days of delivery of the notice of rule, the rule is in force until it is ratified by a majority of the members present at the next general meeting of the members with the requisite quorum.

(5) Where a board receives a notice of objection from an owner, the proposed rule has no force and effect unless the rule is ratified by a majority of the members present at the next general meeting of the members with the requisite quorum.

(6) A rule that is not ratified at a meeting pursuant to subsection (4) is of no further force or effect.

(7) The rules must be reasonable and consistent with this Act, the declaration and the bylaws.

(8) The rules must be complied with and enforced in the same manner as the bylaws. R.S., c. 85, s. 24; 2009, c. 10, s. 14.

## PART V

## FINANCIAL REPORTING AND AUDITOR

**Audited annual financial statements**

**40** Every corporation shall cause audited annual financial statements to be prepared showing its assets and liabilities and its income and expenses and containing such other information, and being in such form, as prescribed by the regulations and shall furnish such statements to the Registrar and make such statements available to each of its members. 1998, c. 28, s. 17; 2009, c. 10, s. 15.

**Exception**

**41** Notwithstanding Section 40, a corporation that has as one of its objects the management of a property consisting of fewer than 10 units is not required to have its annual financial statements audited, however the unaudited annual financial statements must be approved by the board and the approval must be evidenced by the signature at the foot of the balance sheet by two of the directors duly authorized to sign. 2009, c. 10, s. 16; 2022, c. 10, s. 9.

**Duties of owners**

**42 (1)** This Section does not apply with respect to a corporation that has as one of its objects the management of a property consisting of fewer than 10 units.

- (2)** At each annual meeting, the owners shall
- (a) set the fiscal year of the corporation; and
  - (b) appoint an auditor of the corporation to hold office until the close of the next annual meeting.
- (3)** Where the owners do not
- (a) set the fiscal year; or
  - (b) appoint an auditor,

the board may do so.

**(4)** No person may be appointed or act as auditor of a corporation who is a director, officer, employee or manager of the corporation, has an interest in contracts of the corporation, or is a partner, employer or employee of any director, officer, employee or manager of the corporation.

**(5)** No person may be appointed or hold office as auditor of a corporation unless that person is licensed as a public accountant pursuant to the *Chartered Professional Accountants Act*.

**(6)** Where an auditor is not appointed at an annual meeting, the auditor in office continues in office until a successor is appointed.

**(7)** Notwithstanding anything contained in this Section, the owners may remove an auditor in accordance with any contract of employment made between the corporation and the auditor or any provision of law respecting the employment.

(8) The remuneration of an auditor appointed by the owners is fixed by the owners, or by the board if it is authorized to do so by the owners, and the remuneration of an auditor appointed by the board is fixed by the board.

(9) Where for any reason no auditor is appointed, the Court may, on the application of an owner, appoint an auditor to hold office until the close of the next annual meeting and may fix the remuneration to be paid by the corporation for the services of that auditor.

(10) The corporation shall give a person appointed as auditor notice in writing of the appointment forthwith after the appointment is made. R.S., c. 85, s. 25.

#### **Duties and powers of auditor**

**43** (1) The auditor shall make such examinations as enable the auditor to report to the owners as required by subsection (2).

(2) The auditor shall make a report to the owners on the comparative financial statements that includes a balance sheet, statement of retained earnings, income statement and statement of changes in financial position, to be laid before the corporation at each annual meeting during the term of office of the auditor, and shall state in the report whether, in the opinion of that auditor, the financial statements referred to therein present fairly the financial position of the corporation and the results of its operations for the period under review in accordance with generally accepted accounting principles applied on a basis consistent with that of the preceding period, if any.

(3) Where a report prepared pursuant to subsection (2) does not contain the unqualified opinion required thereby, the auditor shall state in the report the reasons therefor.

(4) The auditor of a corporation shall have access at all times to all records, documents, accounts and vouchers of the corporation and may require from the directors, officers and employees of the corporation such information and explanations as, in the opinion of that auditor, are necessary to enable that auditor to report pursuant to subsection (2).

(5) The auditor of a corporation may attend any meeting of owners and receive all notices and other communications related to any meeting that an owner is entitled to receive and be heard at any meeting that the auditor attends on any part of the business of the meeting that concerns the auditor as auditor.

(6) At any meeting of the owners, the auditor, if present, shall answer inquiries concerning the basis upon which that auditor formed the opinion given in the report made pursuant to subsection (2).

(7) The financial statement must be approved by the board and the approval is evidenced by the signature at the foot of the balance sheet by two of the directors duly authorized to sign, and the auditor's report must be attached to or accompany the financial statement.

(8) The corporation shall, 10 days or more before the annual meeting of owners, send by prepaid mail or deliver to each owner at that owner's

latest address as shown on the records of the corporation a copy of the financial statement and a copy of the auditor's report.

- (9) The board shall lay before each annual meeting of owners
  - (a) a financial statement made in accordance with generally accepted accounting principles;
  - (b) the report of the auditor to the owners; and
  - (c) such further information respecting the financial position of the corporation as the bylaws of the corporation require.

(10) The corporation shall file with the Registrar a copy of the financial statement and a copy of the auditor's report within 90 days after the annual general meeting. R.S., c. 85, s. 26; 2022, c. 10, s. 10.

## PART VI

### CONDOMINIUMS

#### Units and common interests

- 44 (1) Units and common interests are real property for all purposes.
- (2) Subject to this Act, the declaration and the bylaws, each owner is entitled to exclusive ownership and use of that person's unit.
- (3) No condition may be permitted to exist and no activity may be carried on in any unit or the common elements that is likely to damage the property.
- (4) The corporation or any person authorized by the corporation may enter any unit at any reasonable time to perform the objects and duties of the corporation. R.S., c. 85, s. 27.

#### Common elements

- 45 (1) The owners are tenants in common of the common elements.
- (2) An undivided interest in the common elements is appurtenant to each unit.
- (3) The proportions of the common interests are those expressed in the declaration.
- (4) Subject to this Act, the declaration and the bylaws, each owner may make reasonable use of the common elements.
- (5) The ownership of a unit may not be separated from the ownership of the common interest and any instrument dealing with a unit operates to deal with the common interest appurtenant thereto without express reference thereto.
- (6) Except as provided by this Act, the common elements may not be partitioned or divided.

(7) No encumbrance is enforceable against the common elements after the declaration and description are accepted for registration.

(8) Where but for subsection (7) an encumbrance would be enforceable against the common elements, the encumbrance is enforceable against all the units and common interests.

(9) Any unit and common interest may be discharged from such an encumbrance by payment to the claimant of a portion of the sum claimed determined by the proportions specified in the declaration for sharing the common expenses.

(10) Upon payment of a portion of the encumbrance sufficient to discharge a unit and common interest, the claimant shall give to the owner a discharge of that unit and common interest in accordance with the regulations.

(11) For the purpose of municipal assessment and taxation, each unit and common interest constitute a parcel, and the common elements do not constitute a parcel.

(12) For the purpose of determining liability resulting from breach of the duties of an occupier of land, the corporation is the occupier of the common elements and the owners are not occupiers of the common elements. R.S., c. 85, s. 28.

#### Easements

46 (1) The following easements are appurtenant to each unit:

(a) first: where a building or any part of a building

(i) moves after acceptance of the declaration and description for registration, or

(ii) after having been damaged and repaired, is not restored to the position occupied at the time of acceptance of the declaration and description for registration,

an easement for exclusive use and occupation in accordance with this Act, the declaration and the bylaws, over the space of the other units and common elements that would be space included in the unit if the boundaries of the unit were determined by the position of the buildings from time to time after acceptance of the description for registration and not at the time of acceptance for registration;

(b) second: an easement for the provision of any service through any installation in the common elements or any other unit; and

(c) third: an easement for support and shelter by the common elements and any other unit capable of providing support and shelter.

(2) The following easements are appurtenant to the common elements:

(a) first: an easement for the provision of any service through any installation in any unit; and

(b) second: an easement for support and shelter by any unit capable of providing support and shelter.

(3) All ancillary rights and obligations reasonably necessary to make easements effective apply in respect of easements implied or created by this Act. R.S., c. 85, s. 29.

#### **Interpretation of Sections 48 and 49**

47 In Sections 48 and 49,

“amalgamated corporation” means a corporation that is formed as a result of an amalgamation pursuant to Sections 48 and 49;

“amalgamating corporation” means a corporation that is amalgamated with one or more other corporations pursuant to Sections 48 and 49. 1998, c. 28, s. 18.

#### **Registration of amalgamation documents**

48 (1) Subject to the regulations, two or more corporations may amalgamate by registering a declaration and description if

(a) they have complied with subsections (2) and (3) and all requirements prescribed by the regulations; and

(b) the owners of at least 80% of the units of each corporation vote in favour of approving the declaration and description.

(2) The board of each amalgamating corporation shall call a meeting of the owners for the purpose of approving the declaration and description.

(3) The board shall give the owners a notice of the meeting that includes

(a) a copy of the proposed declaration and description of the amalgamated corporation and a copy of the proposed budget for the first year of operations of the amalgamated corporation;

(b) a copy of all proposed bylaws and rules of the amalgamated corporation;

(c) a status certificate for each amalgamating corporation in a form approved by the Registrar;

(d) the report of the auditor of each of the amalgamating corporations on the last annual financial statements of that corporation, if it is not included in the status certificate; and

(e) such additional statements or information prescribed by the regulations.

(4) The declaration of an amalgamated corporation may not be registered unless it is executed by the officers of each of the amalgamating corporations duly authorized to sign on behalf of the amalgamating corporation.

(5) Part VIII does not apply to an amalgamation carried out pursuant to this Section but does apply to an amalgamated corporation. 1998, c. 28, s. 18.

**Effect of registration**

**49 (1)** On registration of a declaration and description for an amalgamated corporation,

(a) the amalgamating corporations are amalgamated and continue as one corporation under a new name assigned in accordance with Section 18;

(b) the units and common interests of the amalgamating corporations are continued as units and common interests in the amalgamated corporation;

(c) all encumbrances that affected the common elements of the amalgamating corporations are continued as encumbrances that affect the common elements of the amalgamated corporation;

(d) all declarations, descriptions, bylaws and rules of the amalgamating corporations cease to apply;

(e) the members of the amalgamating corporations are the first members of the amalgamated corporation;

(f) the directors of the amalgamating corporations are the first directors of the amalgamated corporation;

(g) all the property and rights of the amalgamating corporations are the property and rights of the amalgamated corporation and all the obligations and liabilities of the amalgamating corporations are the obligations and liabilities of the amalgamated corporation; and

(h) the amalgamated corporation replaces the amalgamating corporations as a party in any action or proceeding to which the amalgamating corporation is a party.

**(2)** Where the amalgamated corporation has, as one of its objects, the management of a property consisting of 10 or more units, the directors shall, immediately following the registration and description for the corporation, appoint one or more auditors to hold office until the close of the meeting of owners held pursuant to subsection (3).

**(3)** The first directors of an amalgamated corporation hold office until the members elect their successors at a meeting that the first directors shall call and hold within 60 days following the registration of the declaration and description for the corporation and such election is held on the basis of one vote per member.

**(4)** At the meeting referred to in subsection (3), the owners shall appoint successors to the auditors mentioned in subsection (2) and Sections 42 and 43 apply to the successors. 1998, c. 28, s. 18; 2009, c. 10, s. 17.

**Duties of owners**

**50 (1)** Each owner is bound by and shall comply with this Act, the declaration and the bylaws.

**(2)** Each owner has a right to the compliance by the other owners with this Act, the declaration and the bylaws.

(3) The corporation, and any person having an encumbrance against any unit and common interest, has a right to the compliance by the owners with this Act, the declaration and the bylaws. R.S., c. 85, s. 30.

### Financial provisions

51 (1) The corporation

(a) shall establish an operating fund for the payment of the common expenses to which fund the owners shall contribute in proportions specified in the declaration;

(b) shall assess and collect the owner's contributions towards the common expenses and the reserve fund established by the corporation pursuant to subsection 52(1) and any contingency fund established by the corporation pursuant to subsection 53(1) as regulated by the declaration and the bylaws;

(c) shall pay the common expenses; and

(d) has the right to recover from any owner

(i) the unpaid amount of any assessment,

(ii) any sum of money expended by it for repairs to, or work done by it or at its direction in complying with any notice or order by a competent public or local authority in respect of that portion of the building comprising the unit of that owner, and

(iii) any sum of money expended by it for repairs done by it pursuant to subsection 59(6) for the owner.

(2) Where an owner defaults in the owner's obligation to pay to the corporation any amount the corporation has the right to recover pursuant to clause (1)(d), the corporation has a lien for the unpaid amount against the unit and common interest of that owner.

(3) The liens referred to in subsections (2), 56(3) and 59(10) are payable in priority to all other liens, charges or mortgages in respect of the unit and the common interest, other than a lien for taxes or a lien for money due to the Nova Scotia Power Corporation for the supply of electric power and energy.

(4) The liens referred to in subsections (2), 56(3) and 59(10) are not a charge against the unit and the common interest of any unit registered pursuant to the *Land Registration Act* until a certificate evidencing the lien has been recorded in the register of the unit.

(5) The corporation may record a notice of the liens referred to in subsections (2), 56(3) and 59(10) in the parcel register of any unit to which the lien applies and shall thereupon serve the owner of the unit with a copy of the lien and recording particulars.

(6) Upon satisfaction of a lien, including payment of the fees for recording the lien and the release, the corporation shall record a release of the lien in the parcel register of the unit.

(7) Every mortgagee, judgment creditor or other person having any lien, charge or encumbrance upon or against a unit and the common interest subject to the liens mentioned in subsections (2), 56(3) and 59(10) may, at any time after the liens arise, pay to the corporation the amount of the liens, together with all interest and expenses and add the amount so paid to that person's mortgage, judgment or other security, and has in respect thereto the same rights, remedies and privileges against the unit and the common interest as the mortgagee, judgment creditor or other person has by virtue of or under the security held by the mortgagee, judgment creditor or other person and the mortgagee, judgment creditor or other person may also sue for and recover in an action for debt the amount so paid, together with interest thereon, against the person primarily liable to pay such amount.

(8) A lien may be enforced in the same manner as a mortgage and the Rules of the Court respecting foreclosure apply with necessary changes.

(9) Upon payment of the unpaid amount, the corporation shall give the owner a discharge in the prescribed form. R.S., c. 85, s. 31; 1998, c. 28, s. 19; 2001, c. 6, s. 100; 2009, c. 10, s. 18; 2022, c. 10, s. 11.

### Reserve fund

**52** (1) The corporation shall establish and maintain a reserve fund for major repair and replacement of the common elements and assets of the corporation, including, where applicable, roofs, exteriors of buildings, roads, sidewalks, sewers, heating, electrical and plumbing systems and elevators, laundry, recreational and parking facilities.

(2) Where a corporation has as one of its objects, the management of a property consisting of fewer than 10 units, the corporation shall assess and collect the owners' contributions to the reserve fund in an amount that would result in the amount of the reserve fund being, within five years after September 1, 2011, or, where the corporation is created on or after September 1, 2011, within five years after the corporation is created, 100% of the total amount assessed annually to owners for common expenses.

(3) Where a declaration and description are submitted for registration after February 3, 1999, and the corporation that would be created as a result of the registration of the declaration and description would have, as one of its objects, the management of a property consisting of 10 or more units, the person submitting the declaration and description shall file with the Registrar a reserve-fund study respecting the corporation, completed in accordance with subsection (6) and, notwithstanding any other provision of this Act, the Registrar shall not accept the declaration and description for registration until the reserve-fund study is filed.

(4) Notwithstanding subsection (3), where a declaration and description are submitted for an existing building that is being converted to a condominium corporation, regardless of the number of units to be created, the declarant shall prepare and submit a reserve-fund study before the declaration and description for the property can be accepted for registration.

(5) A reserve-fund study respecting a corporation that is required by this Act to be filed must be completed in the manner and form, contain such information, opinions and recommendations and be prepared by such person or a member of such class of persons as prescribed by the regulations.

(6) Where this Section requires that a reserve-fund study respecting a corporation be filed, that corporation shall, within each 5-year period after the expiry of the time limited for filing a reserve-fund study, cause a reserve-fund study to be completed in accordance with subsection (5) and to be filed with the Registrar no later than 30 days after it is completed.

(7) Where this Section requires a reserve-fund study respecting a corporation to be filed, the board of directors of the corporation shall provide a copy of the status certificate and the master reserve-fund study spreadsheet portions of the reserve-fund study to each of the members of the corporation no later than 60 days after the reserve-fund study has been completed.

(8) The board of directors shall make the full reserve-fund study available for viewing by any member of the corporation on reasonable notice and at any reasonable time.

(9) Notwithstanding subsection (6) or the regulations, where a declarant has filed a reserve-fund study pursuant to subsection (4) and the corporation created will have as one of its objects the management of a property consisting of fewer than 10 units, the corporation is not required to update the reserve-fund study completed pursuant to subsection (4) or have subsequent reserve-fund studies or updates completed.

(10) Where a reserve-fund study respecting a corporation is filed in accordance with this Section and the amount of the reserve fund of the corporation is less than the minimum amount that the reserve-fund study recommends that the fund ought to be, the corporation shall assess and collect contributions from the owners in an amount that will result in the reserve-fund amount recommended by the study being achieved within such period of time as is recommended in the study and continuing to be at least the minimum amount recommended in the reserve-fund study.

(11) Notwithstanding subsection (10), where a declarant has filed a reserve-fund study pursuant to subsection (4) and the corporation created will have as one of its objects the management of a property consisting of fewer than 10 units, the corporation is not required to comply with the provisions of subsection (10).

(12) All contributions collected for a reserve fund must be paid into the reserve fund and used only for those purposes referred to in subsection (1) and the reserve fund must be deposited and maintained in a chartered bank in the Province or, where the principal amount is 100% guaranteed, invested in securities in which trustees are permitted by law to invest trust funds.

(13) Notwithstanding subsection (12), where an existing reserve fund has been invested in compliance with this Act before September 1, 2011, such investment does not require a 100% guarantee of the principal amount until the maturity of the investment or, where there is no maturity date, within 18 months of September 1, 2011.

(14) Any fund set up for any of the purposes mentioned in subsection (1) is and is deemed to be a reserve fund notwithstanding that it may not be so designated.

(15) No part of a reserve fund may be used except for the purposes for which the fund was established.

(16) The reserve fund constitutes an asset of the corporation and may not be distributed to any owner except upon termination of the government of the property pursuant to this Act. R.S., c. 85, s. 31; 1998, c. 28, s. 19; 2009, c. 10, s. 18; 2022, c. 10, s. 11.

### **Contingency fund**

**53** (1) The corporation may establish a contingency fund to be used for such purposes as provided in the bylaws.

(2) The obligation of an owner to contribute towards the common expenses, the reserve fund and any contingency fund is not avoided by waiver of the right to use the common elements or by abandonment.

(3) When a contribution to the contingency fund is required, the owner of every unit is required to contribute to the fund in the same proportion of the unit's common interest as specified in the corporation's declaration.

(4) Any surplus in the operating budget of a corporation at the end of the fiscal year of the corporation must be

- (a) paid into the reserve fund;
- (b) paid into the contingency fund; or
- (c) applied against future common expenses,

but must not, other than on termination, be distributed to the owners. R.S., c. 85, s. 31; 1998, c. 28, s. 19; 2009, c. 10, s. 18.

### **Estoppel certificate**

**54** (1) On the application of an owner or a purchaser of a unit and common interest, the corporation shall issue an estoppel certificate to which is attached copies of the declaration and bylaws of the corporation that certifies

- (a) the amount of any assessments and accounts owing by the owner to the corporation, and for which the corporation has a lien or right of lien against the unit and common interest of the owner;
- (b) the manner in which the assessment and accounts are payable;
- (c) the extent to which the assessment and accounts have been paid by the owner;
- (d) the unit identified by unit number, level number, condominium corporation number and any applicable civic and suite numbers;
- (e) the name, address and telephone number of the condominium management company or manager;
- (f) the names and addresses of the officers of the corporation;

- (g) the current amount of common expenses, and whether they are prepaid or collected in default;
- (h) how the reserve fund is collected and, where collected as a percentage of common expenses, what the percentage is;
- (i) the balance of the reserve fund;
- (j) whether the reserve fund is managed in accordance with the most recent reserve-fund study, if the corporation is required by this Act to file a reserve-fund study;
- (k) any special assessments that are forthcoming or contemplated by the corporation within 12 months of the date of the estoppel certificate;
- (l) copies of the minutes of all meetings of the board of directors and meetings of the members of the corporation held within the previous 24 months;
- (m) any major capital expenditures that are planned by the corporation;
- (n) any lawsuits that have been instituted or are pending by the corporation or against the corporation;
- (o) the debt carried by the corporation from previous expenditures;
- (p) fire insurance, public liability and directors' liability insurance coverage and the amount or value of each policy;
- (q) the content of any proposed bylaws, proposed amendments to existing bylaws or proposed amendments to the declaration;
- (r) the name of each person who owns 10% or more of the common elements; and
- (s) any other prescribed matter,

and in favour of any person dealing with that owner, the certificate is conclusive proof of the matters certified therein.

(2) In the case of a phased-development condominium, in addition to the items mentioned in subsection (1), the corporation shall attach to the estoppel certificate a copy of any information relating to the phases provided by the declarant to the owners. 2022, c. 10, s. 12.

#### **Changes in common elements or assets**

**55 (1)** In this Section, “substantial change” means a change, the amount of which is equal to 25% or more of the appraised value of the property.

(2) The corporation, by an affirmative vote of members who own 80%, or such greater percentage as is specified in the declaration, of the common elements, may make any substantial addition, alteration or improvement to or renovation of the common elements or may make any substantial change in the assets of the corporation, and the corporation, by an affirmative vote of members who own at least 66⅔% of the common elements, may make any other addition, alteration or

improvement to or renovation of the common elements or may make any other change in the assets of the corporation.

(3) The cost of any addition, alteration or improvement to or renovation of the common elements and the cost of any substantial change in the assets of the corporation are common expenses. R.S., c. 85, s. 32; 1998, c. 28, s. 20; 2009, c. 10, s. 19; 2022, c. 10, s. 13.

### Dispute resolution

**56** (1) The Governor in Council may make regulations respecting a process for resolving disputes between an owner and a corporation respecting a breach of the corporation's bylaws made pursuant to clause 38(1)(b) or (c) or the failure of a corporation to effect compliance with subsection 33(2), (3), (4) or (5), subsection 39(8), Section 40 or subsection 43(9), including

- (a) the appointment of persons to hear disputes and appeals and the powers and authorities of such persons;
- (b) the notice requirements and fees required to be paid respecting the hearing or appeal of a dispute;
- (c) the scope of orders that may be issued by persons appointed to hear disputes or appeals under the regulations;
- (d) maximum fines that may be levied against a party;
- (e) an award of costs against a party;
- (f) establishing a process for appeals.

(2) Any order issued pursuant to the regulations made under subsection (1) may, for the purpose of the enforcement of the order, be registered by a party with the Court and is enforced in the same manner as a judgment of that Court.

(3) Where an order is made under the regulations requiring a unit owner to pay the corporation any amount of money and the unit owner fails to make such payment, the corporation has a lien for the unpaid amount against the unit and the common interests of that owner.

(4) The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 2009, c. 10, s. 20.

### Arbitration

**57** (1) Except as provided by this Section, the *Commercial Arbitration Act* applies to every arbitration carried out pursuant to this Section.

- (2) Notwithstanding the *Commercial Arbitration Act*, where
  - (a) the corporation and an owner of a unit that is part of the property managed by the corporation;
  - (b) the corporation and any person who has agreed with the corporation to manage the property;

- (c) the corporation and any other corporation created pursuant to this Act;
- (d) the corporation and the occupier of a unit that is part of the property managed by the corporation;
- (e) an owner of a unit and the occupier of any other unit that is part of the same property that includes the unit of the owner; or
- (f) two or more owners of units that are part of the property managed by the corporation,

are parties to a dispute on any matter to which this Act applies, other than termination of the property and those matters for which regulations have been made pursuant to Section 56, but also including a dispute between a board and an owner of a unit that is part of the property managed by the corporation, as to whether a decision or any proposed action by the board is prejudicial to the property or the corporation, any of the parties may give to the other party or parties and to the Registrar notice that the party giving the notice intends to have the dispute arbitrated by a single arbitrator appointed by the Registrar and, when the notice is given, the parties are deemed, for the purpose of the *Commercial Arbitration Act*, to have entered into a written agreement to submit the differences between or among them arising from the dispute to arbitration by a single arbitrator appointed by the Registrar pursuant to this Act.

(3) Where a notice is given to the Registrar pursuant to subsection (2), the Registrar shall appoint the arbitrator from a list of persons prescribed by the regulations, and the parties are deemed to have consented to the use of mediation by the arbitrator.

(4) Service of a notice pursuant to this Section may be made by personal service, registered mail or substituted service as prescribed by the regulations.

(5) Where a notice is mailed pursuant to subsection (4), it is deemed to be given within seven days after it is mailed, unless the contrary is proved. 2009, c. 10, s. 20.

### Insurance

58 (1) The corporation shall insure its liability to repair the units and common elements after damage resulting from fire, and such other risks as may be specified by the declaration or the bylaws, to the extent required by the declaration or the bylaws and, for that purpose, the corporation has an insurable interest to the replacement value of the units and common elements.

(2) Notwithstanding subsection (1) and the *Insurance Act*, or any other law relating to insurance, an owner may insure the owner's unit in respect of any damage in a sum equal to the amount owing at the date of any loss referred to in the policy on a mortgage of the owner's unit.

(3) Any payment by an insurer under a policy of insurance entered into pursuant to subsection (2), must be made to the mortgagees if the mortgagees, or any of them, so require, in order of their priorities and the insurer is then entitled to an assignment of the mortgage or a partial interest in the mortgage to secure the amount so paid.

(4) A policy of insurance issued to a corporation under the authority of subsection (1) is not liable to be brought into contribution with any other policy of insurance except another policy issued on the same building under the authority of subsection (1).

(5) A policy of insurance issued to an owner under the authority of subsection (2) is not liable to be brought into contribution with any other policy of insurance except another policy issued on the same unit under the authority of subsection (2).

(6) Subsections (1) and (2) do not restrict the capacity of any person to insure otherwise than as provided in those subsections. R.S., c. 85, s. 34.

### **Maintenance and repairs**

**59** (1) For the purpose of this Act, the obligation to repair after damage and to maintain are mutually exclusive, and the obligation to repair after damage does not include the repair of improvements made to units after acceptance for registration of the declaration and description.

(2) Subject to Section 60, the corporation shall repair the units and common elements after damage.

(3) The corporation shall maintain the common elements.

(4) Each owner shall maintain that owner's unit.

(5) Notwithstanding subsections (2), (3) and (4), the declaration may provide that

(a) subject to Section 60, each owner shall repair that owner's unit after damage;

(b) the owners shall maintain the common elements or any part of the common elements; or

(c) the corporation shall maintain the units or any part of the units.

(6) The corporation shall make any repairs that an owner is obligated to make and that the owner does not make within a reasonable time.

(7) An owner is deemed to have consented to have repairs done to the owner's unit by the corporation pursuant to this Section.

(8) The corporation has the right to recover all costs, including insurance deductibles, paid by the corporation for any repairs that the corporation makes to a unit pursuant to subsection (6).

(9) The corporation may recover any insurance deductible in respect to damage to any unit or common elements from an owner if that owner is responsible for the damage.

(10) Where an owner defaults in the owner's obligation to pay the corporation any amount the corporation has the right to recover pursuant to subsec-

tions (8) and (9), the corporation has a lien for the unpaid amount against the unit and the common interests of that owner. R.S., c. 85, s. 35; 2009, c. 10, s. 21.

### Damage

**60 (1)** Where damage to the buildings occurs, the board shall determine within 30 days of the occurrence whether there has been substantial damage to the extent that the cost of repair would be 25%, or such greater percentage as is specified in the declaration, of the value of the buildings immediately prior to the occurrence.

**(2)** Where there has been a determination that there has been substantial damage as provided in subsection (1) and owners who own 80% of the common elements, or such greater percentages as is specified in the declaration, vote for repair within 60 days of the determination, the corporation shall repair.

**(3)** Where on a vote the owners do not vote for repair, the corporation shall, within 10 days of the vote, submit for registration a notice of termination in the prescribed form and the Registrar shall accept the notice for registration.

**(4)** Upon the acceptance for registration of a notice of termination pursuant to subsection (3), the provisions of Section 67 apply. R.S., c. 85, s. 36; 2009, c. 10, s. 22.

### Disbursement of insurance proceeds when vote not to repair

**61 (1)** Where there has been a vote pursuant to Section 60 and the owners have voted not to repair, each owner of a unit shall provide the board with

- (a) a certificate of title from a lawyer practising in the Province certifying to the board the title of the unit and all encumbrances registered or recorded affecting the unit;
- (b) a current payout statement for any encumbrances registered or recorded affecting the unit; and
- (c) any other proof required by the board to determine a person that is entitled to the proceeds from the unit.

**(2)** Upon receipt of the insurance proceeds and the information in subsection (1), the board shall pay from the insurance proceeds any encumbrancer in order of priority and the remainder, if any, to the owner.

**(3)** Where no claim is made for proceeds for a unit after six months from the date of the vote, the board 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.

**(4)** The Court may fix the costs incurred in connection with an application or order made under subsection (3) and may order them to be paid out of the proceeds for the unit or by the corporation or otherwise as it considers just.

**(5)** A payment made pursuant to an order under subsection (3) discharges the corporation to the extent of the amount paid. 2009, c. 10, s. 23.

**Voting**

**62 (1)** The owners have voting rights in the corporation in the proportions specified in this Act and in the declaration.

**(2)** Where permitted by the declaration or bylaws of the corporation, owners may submit ballots by facsimile or electronic mail in accordance with the declaration or bylaws.

**(3)** Notwithstanding any authorization, including a provision in any agreement, mortgage or charge that is made on, before or after February 3, 1999, the holder of a mortgage or charge on a unit may not exercise any right that another person has, by reason of being the owner of a unit, to vote or consent, unless the holder of the mortgage or charge is a mortgagee in possession.

**(4)** For greater certainty, nothing in subsection (3) invalidates any vote that was cast or any consent that was given before February 3, 1999.

**(5)** Any powers of voting conferred by, or any consent required to be given or document required to be executed pursuant to this Act, the declaration or the bylaws by an owner may be exercised, given or executed

(a) in the case of an owner who is an infant, by the owner's guardian;

(b) in the case of an owner who is the subject of a representation order under the *Adult Capacity and Decision-making Act* that applies to the owner's real property, by the owner's representative;

(c) in any other case by the person who for the time being is authorized by law to control the owner's property.

**(6)** Where the Court, upon application of the corporation or of any owner, is satisfied that there is no person capable or willing or reasonably available to exercise the power of voting, giving consent or executing a document, in respect of a unit, the Court

(a) in cases where unanimous vote or unanimous consent is required by this Act, the declaration or the bylaws, shall; and

(b) in any other case, may, in its discretion,

authorize some other fit and proper person to exercise the power of voting, to give the consent or to execute the document, in respect of the unit. R.S., c. 85, s. 37; 1998, c. 28, s. 22; 2017, c. 4, s. 78; 2022, c. 10, s. 14.

**Enforcement**

**63 (1)** Where a duty imposed by this Act, the declaration or the bylaws is not performed, the corporation, any owner or any person having an encumbrance against a unit and common interest may apply to the Court for an order directing the performance of the duty.

(2) The Court may by order direct performance of the duty, and may include in the order any provisions that the Court considers appropriate in the circumstances, including

- (a) the appointment of an administrator for such time, and on such terms and conditions, as it considers necessary; and
- (b) the payment of costs.

(3) An administrator appointed pursuant to subsection (2)

- (a) to the exclusion of the corporation, has such powers and duties of the corporation as the Court orders;
- (b) has the right to delegate any of the powers so vested in the administrator; and
- (c) must be paid for the administrator's services by the corporation, which payments are common expenses.

(4) Nothing in this Section restricts the remedies otherwise available for failure to perform any duty imposed by this Act. R.S., c. 85, s. 38.

#### **Expropriation of property**

**64** (1) Where all of a property is expropriated,

- (a) the corporation shall file a notice of the expropriation with the Registrar in the form and manner prescribed; and
- (b) upon filing such notice the governance of the property by the Act is terminated.

(2) Where a part of the common elements of a corporation is expropriated,

- (a) the corporation shall file a notice of the expropriations with the Registrar in the form and manner prescribed; and
- (b) that part of the common elements that has been expropriated is no longer governed by the Act.

(3) Where one or more units, but less than the whole property, is expropriated, such unit or units continue to be governed by the Act unless the corporation files a notice of the expropriation in the form and manner prescribed by the regulations.

(4) Where one or more units has been expropriated and such unit or units are no longer governed by the Act, the corporation shall

- (a) divide the ownership of the common elements, voting rights and responsibility for expenses that were assigned to the unit or units that were expropriated among the remaining units in proportion to their current ownership of the common elements; and
- (b) submit to the Registrar an amended declaration to reflect the reallocation of the common elements among the remaining units. 2009, c. 10, s. 24.

## PART VII

SALE OF THE PROPERTY  
AND THE COMMON ELEMENTS**Sale of property**

**65 (1)** Sale of any part of the property or any part of the common elements may be authorized by an affirmative vote of owners who own at least 80% of the common elements.

**(2)** Where the owners of at least 80% of the common elements have consented to a sale pursuant to subsection (1), the board, on behalf of the owners, shall

(a) execute the necessary conveyance documents and any other documents, including amendments to the corporation's declaration, legal descriptions and survey plans, that are required to complete the authorized sale of the property or common elements; and

(b) submit to the Registrar for registration

(i) the documents referred to in clause (a),

(ii) a supplementary report on title in a form acceptable to the Registrar, and

(iii) proof, in a form satisfactory to the Registrar, of consent of the owners representing at least 80% of the common elements.

**(3)** Upon the acceptance for registration of the instruments referred to in subsection (2), and where the property is being conveyed to a person other than an owner,

(a) the application of this Act is terminated with respect to the part of the property or part of the common elements, as the case may be, that is being conveyed pursuant to subsection (2);

(b) claims against the property that is being conveyed pursuant to subsection (2), that were created before the acceptance for registration of the declaration and description, are as effective as if the declaration and description had not been accepted for registration; and

(c) judgments and mortgages against that part of the property or the part of the common elements, as the case may be, created after the acceptance for registration of the declaration and description are extinguished.

**(4)** Upon the acceptance for registration of the instruments referred to subsection (2) and where the property is being conveyed to an owner, judgments and mortgages against that part of the property or common elements, as the case may be, created after the acceptance for registration of the declaration and description are extinguished.

**(5)** The proceeds of a sale must be

(a) paid into the reserve fund;

- (b) paid into the contingency fund; or
- (c) applied against future common expenses,

but may not, other than on termination or as permitted by subsection (6), be distributed to the owners.

(6) Notwithstanding subsection (5) and subject to subsection (7), on the affirmative vote of owners who own at least 80% of the common elements, the owners share the proceeds of a sale in the same proportions as their common interests.

(7) Where a sale is made pursuant to this Section and there has been an affirmative vote under subsection (6), any owner who dissented to the sale may elect to have the fair market value of the property at the time of the sale determined by arbitration under the *Commercial Arbitration Act* by serving notice to that effect on the corporation within 10 days after the vote, and the owner who served the notice is entitled to receive from the proceeds of the sale the amount the owner would have received if the sale price had been the fair market value as determined by the arbitration.

(8) Where the proceeds of the sale are inadequate to pay the amount determined pursuant to subsection (7), each of the owners who voted for the sale is liable for a portion of the deficiency determined by the proportions of their common interests. R.S., c. 85, s. 40; 1998, c. 28, s. 24; 2009, c. 10, s. 25; 2022, c. 10, s. 15.

## PART VIII

### TERMINATION

#### Termination of government of property

**66** (1) Termination of the government of the property by this Act may be authorized

- (a) by an affirmative vote of owners who own 100% of the common elements;
- (b) by the consent of the persons having registered claims against the property, created after the acceptance for registration of the declaration and description.

(2) Where termination of the government of the property by this Act is authorized pursuant to subsection (1), the corporation shall submit for registration a notice of termination in the prescribed form, executed by all the owners and all the persons having registered claims against the property created after the acceptance for registration of the declaration and description together with a supplementary report on title in the prescribed form showing the persons signing the notice to be all the owners and persons having registered claims and the Registrar shall accept such notice for registration. R.S., c. 85, s. 41; 1998, c. 28, s. 26; 2022, c. 10, s. 16.

#### Effect of acceptance of termination notice

**67** Upon acceptance for registration of a notice of termination pursuant to subsection 60(3) or 66(2),

- (a) the government of the property by this Act is terminated;

(b) the owners are tenants in common of the land and interests appurtenant to the land described in the description in the same proportions as their common interests;

(c) claims against the land and the interests appurtenant to the land described in the description created before the acceptance for registration of the declaration and description are as effective as if the declaration and description had not been accepted for registration;

(d) encumbrances against each unit and common interest created after the acceptance for registration of the declaration and description are claims against the interest of the owner in the land and interests appurtenant to the land described in the description and have the same priority as they had before the acceptance for registration of the notice of termination; and

(e) all claims against the property created after the acceptance for registration of the declaration and description, other than the encumbrances mentioned in clause (d), are extinguished. R.S., c. 85, s. 42; 2009, c. 10, s. 26.

#### **Application to Court for termination order**

**68 (1)** A corporation, any owner or any person having an encumbrance against a unit and common interest may apply to the Court for an order terminating the government of the property by this Act.

**(2)** The Court may order that the government of the property by this Act be terminated if the Court is of the opinion that the termination would be just and equitable and, in determining whether the termination would be just and equitable, the Court shall have regard to

(a) the scheme and intent of this Act;

(b) the probability of unfairness to one or more owners if termination is not ordered; and

(c) the probability of confusion and uncertainty in the affairs of the corporation or the owners if termination is not ordered.

**(3)** Where an order of termination is made pursuant to subsection (2), the Court may include in the order any provisions that the Court considers appropriate in the circumstances.

**(4)** A copy of any order granted pursuant to this Section must be submitted for registration, and the Registrar shall accept such copy for registration. R.S., c. 85, s. 43.

## **PART VIX**

### **GENERAL**

#### **Contents of agreement of purchase and sale**

**69 (1)** Every agreement of purchase and sale respecting

(a) a unit, where the agreement is entered into by a declarant as vendor; or

(b) a proposed unit,

must contain such provisions as the Governor in Council may prescribe by regulation.

(2) Where any provision is prescribed pursuant to subsection (1), that provision is and is deemed to be part of every agreement of purchase and sale for which the provision is prescribed, notwithstanding any agreement, waiver, declaration or other statement to the contrary.

(3) A purchase and sale agreement for a proposed unit in a corporation may not contain a provision that requires a purchaser to occupy the proposed unit before registration of the corporation and transfer of title from the declarant to the purchaser.

(4) Notwithstanding subsection (3), where a corporation has not been registered on or before the closing date in the purchase and sale agreement, the purchaser and declarant may agree that a purchaser may occupy a proposed unit before the registration and transfer of title from the declarant to the purchaser.

(5) A purchaser who agrees to occupy a proposed unit pursuant to subsection (4) may, subject to the regulations, be charged an occupancy fee, which fee must be disclosed in the purchase and sale agreement, but no other fee is payable to the declarant for the occupation of the unit. R.S., c. 85, s. 44; 2009, c. 10, s. 27.

#### **Advertisements must indicate condominium**

70 All advertisements and promotional materials respecting units or proposed units to be sold by a declarant must indicate that the property is a condominium. 2022, c. 10, s. 17.

#### **Deemed covenant**

71 Notwithstanding any agreement, waiver, declaration or other statement to the contrary, every agreement under which the occupant of a unit is in possession of the unit is deemed to include a covenant whereby the occupant agrees with the person who grants the right to possess the unit that the occupant shall comply with this Act, the regulations, the declaration that applies to the unit and the bylaws and rules of the corporation that has the management of the property that includes the unit. 1998, c. 28, s. 27.

#### **Corporation budget provided by declarant**

72 (1) The declarant shall provide a copy of the budget for the corporation for its first year of operation with any purchase and sale agreement that the declarant enters into for a unit or proposed unit in the corporation.

(2) The declarant shall provide an identical budget for all purchase and sale agreements entered into for units or proposed units in the corporation.

(3) The solicitor for the declarant shall hold in trust from the proceeds of the sale of the first unit in the corporation, or subsequent units if required, an amount of money equal to 10% of the budget provided by the declarant to the purchaser, and that amount must be held in trust for the benefit of the corporation in the event of a claim pursuant to subsection (5).

(4) The owner of each unit in the corporation, including the declarant, shall pay condominium fees for such unit based on the budget prepared by the declarant, commencing on the date of registration of the declaration and description.

(5) A corporation may make a claim against the declarant for the amount, if any, by which expenses of the corporation in the 12 months proceeding the registration of the declaration and description exceed the budget provided by the declarant pursuant to subsection (1) by more than 10%.

(6) Notwithstanding subsection (5), a declarant is not liable to the corporation for any amount by which the expenses of the corporation in the 12 months proceeding the registration of the declaration and description exceed the budget provided by the declarant pursuant to subsection (1) by more than 10%, if such expenses were not reasonably foreseen by the declarant at the time the budget was provided with the first purchase and sale agreement for a unit or proposed unit in the corporation.

(7) A claim made by a corporation pursuant to subsection (5) must be made within 15 months of the date of registration of the declaration and description and must be served upon the declarant and its lawyer by any means that affords proof of delivery.

(8) Where the lawyer for the declarant is not served with a claim pursuant this Section within 15 months of the date of registration of the declaration and description, the lawyer for the declarant may release the proceeds held in trust to the declarant. 2009, c. 10, s. 28.

#### **Corporation to be provided names and addresses of tenants**

73 Where an owner is renting a unit to another individual and the *Residential Tenancies Act* applies to the rental agreement or tenancy, the owner shall provide to the corporation the names and addresses of all tenants. 2022, c. 10, s. 18.

#### **Breach by tenant**

74 (1) Where a tenant of an owner fails to comply with the corporation's declarations, bylaws or common-element rules, the corporation may issue a notice to the owner and the tenant, in the manner prescribed, advising of the breach.

(2) After receiving a notice pursuant to subsection (1), where an owner fails to remedy a breach of the corporation's declaration, bylaws or common-element rules to the satisfaction of the board within the time periods set out in the regulations, the board may make an application pursuant to this Section and Section 53 of the *Residential Tenancies Act*. 2009, c. 10, s. 28.

#### **Application to Director of Residential Tenancies**

75 (1) Notwithstanding the *Residential Tenancies Act*, a condominium corporation, after complying with Section 74, may make an application to the Director of Residential Tenancies in the manner set out in Section 53 of that Act in respect of any tenancy agreement between an owner of the common elements of the corporation and its tenant to determine if there has been a breach of the corporation's declaration, bylaws or common-element rules.

(2) Upon an application being made pursuant to Section 53 of the *Residential Tenancies Act* and served in accordance with that Act, the Director may exercise the duties and powers set out in Section 56 of that Act and may make an order pursuant to clause 58(e) terminating the tenancy on a date specified in the order and order the tenant to vacate the unit on that date if the Director is satisfied that there has been a breach of the corporation's declaration, bylaws or common-element rules and such breach warrants an order pursuant to clause 58(e). 2009, c. 10, s. 28; 2010, c. 46, s. 2.

#### **Applicability of certain enactments**

76 (1) The Governor in Council may, by regulation, provide that Part VIII of the *Municipal Government Act* and the regulations and bylaws made thereunder apply to a property or land intended to be included in a property only to the extent specified in the regulation.

(2) The *Securities Act* does not apply to the sale of units and common interests.

(3) When a property is governed by this Act, the *Partition Act* does not apply to that property or the owners.

(4) The corporation, unless it is the plaintiff, is a defendant in any action commenced under the *Quieting Titles Act* where the land in respect of which the property right is claimed is part of a property governed by this Act. R.S., c. 85, s. 45.

#### **Penalty for failure to file information**

77 (1) A corporation that fails to file with the Registrar a financial statement pursuant to Section 40 or a reserve-fund study pursuant to Section 52, and that does not do so within 10 days after receiving a notice from the Registrar requiring that corporation to do so, is liable to a penalty in such amount, not less than \$1,000 or more than \$10,000 as provided in the regulations, to be recovered on behalf of the Crown in right of the Province for the use of the Province.

(2) A notice given pursuant to subsection (1) must be given in the manner provided in the regulations.

(3) A penalty due to the Crown under subsection (1) is paid to the Minister of Finance and Treasury Board and the Minister of Finance and Treasury Board may sue for and recover the penalty in the name of the Crown in right of the Province in an action in any court as if the amount were a debt.

(4) The Registrar may waive a penalty that a corporation would otherwise be liable to pay under this Section under such circumstances as are prescribed by the regulations. 1998, c. 28, s. 28; 2022, c. 10, s. 19.

#### **Regulations**

- 78 (1) The Governor in Council may make regulations
- (a) classifying properties for the purpose of the regulations;

- (b) defining the class or classes of property that may be accepted for registration by the Registrar;
- (c) respecting phased-development condominiums, bare-land condominiums, mixed-use condominiums and recreational condominiums, including
  - (i) the information to be contained in the declaration and description,
  - (ii) the disclosure of information, and
  - (iii) exemptions from specific provisions of the Act;
- (d) prescribing the conditions a phased-development condominium must meet, and prescribing the information or documents to be provided to the Registrar, in order to be exempt from the subdivision-approval requirements of the *Municipal Government Act*;
- (e) prescribing the duties of officers appointed pursuant to the *Registry of Deeds Act* or *Land Registration Act* and of the Registrar of Joint Stock Companies for the purpose of this Act;
- (f) governing the method of describing in instruments a property or any part of a property;
- (g) governing surveys, structural and architectural plans, descriptions and diagrams, and prescribing procedures for their registration and amendment;
- (h) prescribing the form of a plan of survey to be submitted pursuant to subsection 6(4);
- (i) requiring, in respect of any class of properties, in lieu of or in addition to the requirements of Section 12, surveys of the properties showing the units and common elements;
- (j) prescribing the manner of a covenant under subsection 14(1);
- (k) specifying services and utilities for the purpose of Section 17;
- (l) respecting the consolidation of units pursuant to clause 19(6)(e);
- (m) respecting the division of units pursuant to clause 19(6)(f);
- (n) prescribing the form and contents of a certificate of consolidation for the purpose of subsection 19(12);
- (o) for the purpose of subsections 38(4) and (5), prescribing standard bylaws for corporations with power to prescribe different classes of corporations and to prescribe different standard bylaws for each class of corporation;
- (p) respecting the registration and recording of declarations, descriptions, bylaws, notices of termination and other instruments;
- (q) respecting the names of corporations;
- (r) respecting additions to the common elements;

- (s) prescribing the form and content of financial statements for the purpose of Section 40, with power to prescribe different forms and requirements for different classes of condominium corporations;
- (t) prescribing the manner and form of a reserve-fund study required by Section 52, the information and opinions and recommendations to be contained in such study and the person or class of persons who is to prepare such study;
- (u) prescribing additional requirements for reserve-fund studies required when declaration and descriptions are filed under subsection 52(4);
- (v) prescribing matters to be certified in an estoppel certificate issued pursuant to subsection 54(1);
- (w) prescribing provisions that are required to be included in agreements of purchase and sale respecting units;
- (x) prescribing who may be arbitrators for the purpose of Section 57;
- (y) prescribing procedures to be followed by parties that make an application pursuant to Section 57;
- (z) prescribing forms of substituted service for the purpose of subsection 57(4);
- (aa) prescribing the manner of notices required pursuant to Section 64;
- (ab) prescribing terms and conditions to which occupancy fees under subsection 69(5) are subject and the maximum amount or rate of such fees;
- (ac) prescribing the content of any notices to be given pursuant to Section 74 and time limits for the purpose of subsection 74(2);
- (ad) setting the amount of the penalty for the purpose of Section 77, with power to prescribe different penalties for different classes of corporations, prescribing the manner in which a notice is given pursuant to that Section and prescribing the circumstances under which the Registrar may waive the penalty;
- (ae) prescribing requirements that two or more corporations must meet to amalgamate;
- (af) prescribing the fees for registering a document or providing a service;
- (ag) prescribing the requirements for consolidating two or more units;
- (ah) describing the content to be included in the definition of a “standard unit” in a declaration;
- (ai) prescribing the requirement to add a unit or units to an existing corporation;
- (aj) prescribing forms and providing for their use;

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

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

(2) Any provision of any regulation may be made to apply to all properties or to any class of properties.

(3) A regulation made pursuant to clause (1)(m) may be made to apply to either one or both of those classes of agreements of purchase and sale referred to in subsection 69(1).

(4) The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. R.S., c. 85, s. 46; 1996, c. 33, s. 2; 1998, c. 28, s. 29; 2001, c. 6, s. 100; 2002, c. 10, s. 3; 2009, c. 10, s. 29; 2010, c. 46, s. 3; 2022, c. 10, s. 20.

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CHAPTER C-46

**An Act to Avoid Conflict of Interest  
by Members of the House of Assembly,  
Members of the Executive Council  
and Public Employees**

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

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**Short title**

1 This Act may be cited as the *Conflict of Interest Act*. 2010, c. 35, s. 1.

**Purpose of Act**

2 The purpose of this Act is to ensure that members and public employees

(a) perform their duties and functions of office and arrange their private affairs in a manner that promotes public confidence and trust in the integrity of each member and public employee; and

(b) avoid conflict of interest and do not, in order to further their private interest or a private interest of their family, take advantage of their official positions or of information obtained in the course of their official duties that is not available to the public. 2010, c. 35, s. 2.

**Interpretation**

3 In this Act,

“Commissioner” means the Conflict of Interest Commissioner appointed pursuant to this Act;

“department” means any department, board, commission, foundation, agency, association or other body of persons, whether incorporated or unincorporated, all the members of which or all the members of the board of management or board of directors of which

(a) are appointed by an Act of the Legislature or by order of the Governor in Council; or

(b) where not so appointed, in discharge of their duties are public officers or servants of the Crown in right of the Province or for the proper discharge of their duties are, directly or indirectly, responsible to the Crown in right of the Province;

“dependent child” means a child who is under the age of majority or, although over the age of majority, unable, by reason of illness, disability or other cause, to withdraw from the charge of the person’s parents or provide for the child’s reasonable needs on the child’s own;

“disclosed asset” means an asset required to be disclosed;

“disclosed liability” means a liability required to be disclosed;

“individual or organization” means an individual, partnership, organization or corporation, or subsidiary of a corporation, and, for greater certainty, includes a union;

“member” means, unless the context otherwise requires, a member of the House of Assembly, and includes a minister;

“minister” means a member of Executive Council;

“ministerial assistant” means a ministerial assistant appointed in accordance with the *Executive Council Act*;

“payment” includes remuneration, reimbursement for expenses, an advance, a deposit, a contribution, a gift in excess of \$250 and a loan;

“private interest” does not include an interest in a matter that

- (a) is of general application;
- (b) affects a member as one of a broad class of persons;
- (c) concerns remuneration, allowances and benefits of a member as a member; or
- (d) is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member;

“public employee” means a person employed by a department, and includes a member of the board of directors or the board of management of a department;

“recognized party” means a recognized party within the meaning of the *House of Assembly Act*;

“spouse” means a person, including a person of the same sex as the member, who is married to, the domestic partner of or living in a conjugal relationship with a member, but does not include a person who is separated and living apart from a member. 2010, c. 35, s. 3.

## CONFLICT OF INTEREST COMMISSIONER

### Appointment

**4 (1)** Upon consultation with the leaders of the recognized parties and subject to the approval of the House of Assembly, the Governor in Council shall appoint a person to be the Conflict of Interest Commissioner.

**(2)** The Commissioner may be appointed on either a full-time or part-time basis.

**(3)** The Commissioner holds office for a term of not more than five years but may be reappointed.

**(4)** The Commissioner may resign at any time by giving written notice to the Speaker of the House of Assembly.

(5) The Commissioner may be removed or suspended before the end of the term of office by the Governor in Council on the recommendation of the House of Assembly for cause or incapacity. 2010, c. 35, s. 4.

#### **Acting Commissioner**

5 (1) The Governor in Council may appoint an acting Commissioner if the office of the Commissioner becomes vacant

(a) during a sitting of the House of Assembly and the Assembly does not determine whether or not to give approval under Section 4 before the end of the sitting; or

(b) while the House of Assembly is not sitting.

(2) The acting Commissioner holds office until a new Commissioner is appointed.

(3) Where the Commissioner is unable to act because of illness, the Governor in Council may appoint an acting Commissioner who holds office until the Commissioner is again able to act or until the office becomes vacant. 2010, c. 35, s. 5.

#### **Remuneration**

6 The Commissioner shall be paid such remuneration and allowances as determined by the Governor in Council. 2010, c. 35, s. 6.

#### **Powers, privileges and immunities**

7 For the purpose of exercising jurisdiction pursuant to this Act, the Commissioner has all the powers, privileges and immunities of a commissioner appointed pursuant to the *Public Inquiries Act* and may establish rules of procedure for the purpose of this Act. 2010, c. 35, s. 7.

### **DISCLOSURE BY MEMBERS OF THE HOUSE OF ASSEMBLY**

#### **Disclosure statements**

8 (1) Every member shall file with the Commissioner in accordance with this Act

(a) a disclosure statement respecting the member; and

(b) where the member has a spouse or dependent children, a separate disclosure statement respecting the member's spouse and dependent children.

(2) A member shall file the disclosure statements

(a) within 30 days of becoming a member; and

(b) in each and every year thereafter, on or before June 30th.

(3) Where a member acquires a spouse after becoming a member, the member shall file a disclosure statement respecting the member's spouse and dependent children within 90 days of acquiring the spouse.

(4) Where at any time after a disclosure statement is filed a member or the member's spouse or dependent child acquires or disposes of an asset or liability that is required to be disclosed pursuant to this Act, the member shall file an amended disclosure statement within 90 days after acquisition or disposition of that asset or liability. 2010, c. 35, s. 8.

#### **Meeting with Commissioner**

9 (1) After filing a disclosure statement or an amended disclosure statement, a member may meet with the Commissioner to ensure that adequate disclosure is made and to obtain any advice about the member's obligations under this Act.

(2) The member's spouse may attend the meeting with the Commissioner pursuant to subsection (1) and may otherwise seek the Commissioner's advice. 2010, c. 35, s. 9.

#### **Information available to public**

10 (1) The Commissioner shall make every disclosure statement under clause 8(1)(a), or disclosure statement in amendment of it, readily available to the public by ensuring that the disclosure statement and any amended disclosure statements are published as soon as practical on a public website and by any other means that the Commissioner considers appropriate.

(2) Notwithstanding subsection (1), the Commissioner shall not disclose on a public website any information respecting a member's

- (a) residential address;
- (b) residential telephone number;
- (c) spouse; or
- (d) dependent children,

contained in a disclosure statement under clause 8(1)(a) or a disclosure statement in amendment of it.

(3) Any person may obtain a copy of a disclosure statement under clause 8(1)(a), or disclosure statement in amendment of it, without payment of any fee. 2010, c. 35, s. 10.

#### **Contents of disclosure statement**

11 (1) In this Section,

“immediate family” of a member means the member's spouse, parents, children, siblings, grandparents and grandchildren;

“subsidiary corporation” means a subsidiary corporation as defined in the *Income Tax Act* (Canada), and includes affiliated corporations as defined in that Act.

(2) The appropriate disclosure statement must disclose

- (a) the name of every individual or organization that in any manner whatsoever remunerates or contributes to the member or

the member's spouse or dependent children, and includes any reimbursement for expenses made to any of them;

(b) the issuer or name of any bonds, debentures, holdings in investment funds, mutual funds, investment trusts or similar securities of a member or the member's spouse or dependent children, except Canada Savings Bonds or other investments or securities of fixed value issued or guaranteed by any level of government in Canada or an agency of a government in Canada, registered retirement savings plans that are not self-directed, open-ended mutual funds, guaranteed investment certificates or any similar financial instruments, annuities and life insurance policies and pension rights;

(c) the nature and location of any interest of the member in or with respect to real property, whether situate within or outside of the Province, including the nature and location of any interest of the member's spouse or dependent children in or with respect to real property except any interest of the member, the member's spouse or dependent children in or with respect to real property that is used by the member, the member's spouse or dependent children for residential or recreational purposes;

(d) unless excluded by clause (b), the name of every corporation, or subsidiary of a corporation, in which the member or the member's spouse or dependent children hold a beneficial interest, a share warrant or a purchase option;

(e) the nature of any interest of a member in property of a kind required to be disclosed pursuant to clause (b), (c) or (d) and over which the member or the member's spouse or dependent children have a general power of appointment or an expectancy under a trust;

(f) any trust established for the member or the member's spouse or dependent children or any trust from which a payment is made to the member or the member's spouse or dependent children and the names of the trustees and the contributors to any such trust, other than a trust established by the member or the member's spouse for the member's dependent children;

(g) the name of every individual or organization to which the member or the member's spouse or dependent children are financially indebted, except a debt

(i) that is a current and ordinary household and personal living expense of the member or the member's spouse or dependent children,

(ii) respecting an automobile, a boat used for recreational purposes or recreational vehicles of a member or the member's spouse or dependent children,

(iii) that is money or other property entrusted to or received by a member or the member's spouse or dependent children in trust for a person other than the member or the member's spouse or dependent children,

(iv) respecting an interest of the member or the member's spouse or dependent children that is not required, pursuant to clauses (b) and (c), to be disclosed, or

(v) that is less than \$10,000;

(h) the name of every individual or organization that is financially indebted to the member or the member's spouse or dependent children in an amount greater than \$10,000;

(i) the name of every individual or organization to which a member or the member's spouse or dependent children transferred a disclosed asset or settled a disclosed liability;

(j) all payments received by a member or the member's spouse or dependent children from a recognized party or an electoral district association; and

(k) a gift of a value greater than \$250 received by the member or the member's spouse or dependent children other than a gift to a member or a member's spouse or dependent children by any one of them to each other or a gift from a member of the immediate family.

(3) Notwithstanding subsection (2), a member is not required to include in a disclosure statement

(a) assets and financial interests having a value of less than \$10,000;

(b) a debt owed by the member to the member's spouse or dependent children or a member of the member's immediate family; or

(c) a debt owed to the member by the member's spouse or dependent children or by a member of the member's immediate family.

(4) In subsection (5), "member" in Sections 19 and 21 of the *House of Assembly Act* includes a minister.

(5) Nothing in this Act affects Sections 19 and 21 of the *House of Assembly Act* and, where the member's spouse or dependent children have a contract or agreement with the Government of the Province or with any minister or department, the contract or agreement must be disclosed by the member unless the contract or agreement has been awarded by open public tender.

(6) Nothing in this Part affects Sections 18 and 20 of the *House of Assembly Act* respecting the disqualification of a member or the vacating of a member's seat. 2010, c. 35, s. 11.

#### CONDUCT OF MEMBERS OF THE HOUSE OF ASSEMBLY

##### **Decision-making in private interest**

**12** A member shall not make or participate in making a decision in the member's capacity as a member if the member knows or ought reasonably to know that in the making of the decision there is the opportunity to further, directly or indirectly, a private interest of the member or the member's family. 2010, c. 35, s. 12.

**Influencing another person**

**13** A member shall not use the member's office to seek to influence a decision made by another person to further, directly or indirectly, a private interest of the member or the member's family. 2010, c. 35, s. 13.

**Use of information not available to general public**

**14 (1)** A member shall not use or share information that is gained in the member's capacity as a member and is not available to the general public to further or seek to further, directly or indirectly, a private interest of the member or the member's family.

**(2)** A member shall not use or share information that is gained in the member's capacity as a member and is not available to the general public to improperly benefit another person. 2010, c. 35, s. 14.

**Activities not prohibited**

**15 (1)** This Act does not prohibit the activities in which members normally engage on behalf of constituents.

**(2)** For greater certainty, nothing in this Act prohibits a member, other than a minister, from appearing before a board, court, tribunal or other body as a member. 2010, c. 35, s. 15.

**Gifts and personal benefits**

**16 (1)** A member shall not, directly or indirectly, accept a fee, gift or personal benefit that is connected, directly or indirectly, with the performance of the member's duties of office, except compensation authorized by law.

**(2)** Subsection (1) does not apply to a gift or personal benefit that is received as an incident of the protocol or social obligations that normally accompany the duties or responsibilities of office.

**(3)** Where a gift or personal benefit referred to in subsection (2) exceeds \$250 in value, the member shall report the gift or personal benefit in the member's disclosure statement and comply with any instructions of the Commissioner with respect to the matter. 2010, c. 35, s. 16.

**Conflict of interest**

**17 (1)** A member who has reasonable grounds to believe that the member has a conflict of interest in a matter that is before the House of Assembly or the Executive Council, or a committee of either of them, shall, where present at a meeting considering the matter,

- (a) disclose the general nature of the conflict of interest;
- and
- (b) withdraw from the meeting without voting or participating in consideration of the matter.

**(2)** Where a member has withdrawn from a meeting in accordance with subsection (1), the secretary of the meeting shall make a record of the disclosure and withdrawal. 2010, c. 35, s. 17.

## CONDUCT OF MINISTERS AND MINISTERIAL ASSISTANTS

**Guidelines**

**18** Ministers and ministerial assistants shall

(a) be truthful and forthright and not deceive or knowingly mislead the House of Assembly or the public, or permit or encourage agents of the Government of the Province to deceive or mislead the House of Assembly or the public;

(b) make every effort to ensure that their departments are not used for partisan political purposes;

(c) avoid situations where a conflict of interest or a reasonable perception of a conflict of interest could arise between the minister or ministerial assistant's public duties and private interests;

(d) not accept any personal benefits in any business dealing, acquire any position or undertake any function or have any financial, commercial or other interest that is incompatible with their offices or duties;

(e) not use their authority or position, government information or government property to advance a private interest or that of a family member; and

(f) respect the responsibilities and obligations placed on public employees, including those that require that senior public employees avoid conduct that could give rise to the perception that they are not politically impartial. 2010, c. 35, s. 18.

**Prohibited behaviour**

**19 (1)** Subject to subsections (2) to (7), a minister shall not

(a) be employed in any other occupation or profession;

(b) manage a business carried on by a corporation;

(c) hold a directorship, unless it is one of the duties of the minister;

(d) hold office in a union or professional association;

(e) carry on business either in a partnership or sole proprietorship; or

(f) hold or trade in securities, stocks, futures or commodities.

**(2)** Clause (1)(f) does not apply to

(a) mutual funds; or

(b) assets that, in the opinion of the Commissioner, are of such minimal value that they do not constitute a risk of a conflict of interest.

**(3)** A minister may engage in the activities prohibited by subsection (1) if the minister has disclosed all material facts to the Commissioner and the Commissioner is satisfied that no conflict exists.

(4) Where the minister complies with subsection (1) by entrusting the assets to one or more trustees,

(a) the provisions of the trust must be in accordance with such terms and conditions as may be specified by the Commissioner; and

(b) a copy of the trust document must be provided to the Commissioner.

(5) Unless otherwise required by law, the Commissioner shall keep the trust document confidential.

(6) A person who becomes a minister shall comply with subsection (1) before the 91st day that follows the person's appointment.

(7) The Commissioner may extend the period referred to in subsection (6) by giving the minister a written notice to that effect, and may impose on the extension those conditions that the Commissioner considers appropriate. 2010, c. 35, s. 19.

#### **Conflict of interest**

20 Where a minister is aware that the minister has a conflict of interest or that there is a reasonable perception of a conflict of interest with respect to a matter on which the minister will be making a decision,

(a) the minister shall report that conflict of interest or perception of a conflict of interest, as the case may be, to the President of the Executive Council or a minister designated by the President of the Executive Council; and

(b) the Executive Council may appoint another minister to perform such duties as the Executive Council considers appropriate for such time as the Executive Council considers necessary to deal with the conflict of interest or perception of a conflict of interest. 2010, c. 35, s. 20.

#### **Meeting with Commissioner upon appointment**

21 As soon as practicable following the appointment of a person as a minister or ministerial assistant, the person shall meet with the Commissioner to obtain advice respecting the person's obligations under the Act. 2010, c. 35, s. 21.

### **PUBLIC EMPLOYEES**

#### **Conflict of interest**

22 (1) In this Section, "private interest" does not include an interest in a matter that

(a) is of general public application;

(b) affects a public employee as one of a broad class of persons;

(c) concerns the remuneration, allowances and benefits of a public employee; or

(d) is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence a public employee.

(2) A public employee shall not act in such a way as to create a conflict of interest contrary to this Act.

(3) A public employee shall not use information acquired in the execution of the office of the public employee that is not available to the general public in order to further a private interest.

(4) Where a public employee is at a meeting at which consideration of a decision arises in the execution of the office of the public employee and knows or ought to know that the decision could result in the furthering of a private interest, the public employee shall

(a) inform the meeting that the decision could result in a personal benefit to the public employee and the general nature of that benefit;

(b) withdraw from the meeting; and

(c) refrain from participating in or influencing the decision,

and the secretary of the meeting shall make a record of the information given and the withdrawal. 2010, c. 35, s. 22.

#### POST-SERVICE RESTRICTIONS AND RESTRICTIONS ON AWARDING OF CONTRACTS

##### Prohibited activity

**23 (1)** In this Section, “member” does not include a minister.

(2) A former minister or ministerial assistant, for 12 months after ceasing to hold office, and a former member or public employee, for six months after ceasing to hold office or employment, shall not knowingly

(a) accept a contract or benefit that is awarded, approved or granted by a government decision-maker;

(b) make representations to a government decision-maker on the former minister’s, ministerial assistant’s, member’s or public employee’s behalf or on behalf of another person with respect to a contract or benefit; or

(c) accept a contract or benefit from any person to make representations to a government decision-maker with respect to a contract or benefit that is or is to be awarded, approved or granted by a government decision-maker.

(3) Subsection (2) does not apply

(a) to contracts of employment with respect to further duties in the service of the Crown in right of the Province; or

(b) if the conditions on which the contract or benefit is awarded, approved or granted are the same for all persons similarly entitled. 2010, c. 35, s. 23.

**Application for exemption from subsection 23(2)**

**24 (1)** A former minister, ministerial assistant, member or public employee may apply to the Commissioner for an exemption from the application of subsection 23(2) with respect to a contract or benefit or a class of contracts or benefits.

**(2)** On the application of a former minister, ministerial assistant, member or public employee, the Commissioner may exempt the contract or benefit or class of contracts or benefits from the application of subsection 23(2) if in the opinion of the Commissioner

(a) the consideration and terms of the contract or benefit are fair and reasonable; and

(b) it is not contrary to the public interest to exempt the contract or benefit or class of contracts or benefits from the application of subsection 23(2).

**(3)** The Commissioner may impose any terms and conditions that the Commissioner considers appropriate on an exemption granted pursuant to this Section. 2010, c. 35, s. 24.

**Offence**

**25 (1)** A former minister, ministerial assistant, member or public employee who contravenes Section 23 is guilty of an offence and liable, on summary conviction, to a fine of not more than \$50,000.

**(2)** No prosecution for a contravention of Section 23 may be commenced more than

(a) in the case of a contravention respecting a contract or a benefit awarded, approved or granted, two years after

(i) the contract has been discharged or terminated,  
or

(ii) the benefit has been terminated; or

(b) in any other case, two years after commission of the contravention. 2010, c. 35, s. 25.

**Executive Council**

**26 (1)** The Executive Council, a member of the Executive Council or an employee of a department shall not knowingly

(a) award or approve a contract with or grant a benefit to a former minister or former ministerial assistant within 12 months after the former minister or former ministerial assistant ceased to hold office;

(b) award or approve a contract with, or grant a benefit to, a former minister or former ministerial assistant who has, during the 12 months immediately after the former minister or former ministerial assistant ceased to hold office, made representations in respect of the contract or benefit; or

(c) award or approve a contract with, or grant a benefit to, a person on whose behalf a former minister or former ministerial assistant has, during the 12 months immediately after the former minister or former ministerial assistant ceased to hold office, made representations in respect of the contract or benefit.

(2) The Executive Council, a member of the Executive Council or an employee of a department shall not knowingly

(a) award or approve a contract with or grant a benefit to, a former member or former public employee, until six months after the former member or former public employee ceased to hold office;

(b) award or approve a contract with, or grant a benefit to, a former member or former public employee who has, during the six months immediately after the former member or former public employee ceased to hold office, made representations in respect of the contract or benefit; or

(c) award or approve a contract with, or grant a benefit to, a person on whose behalf a former member or former public employee has, during the six months immediately after the former member or former employee ceased to hold office, made representations in respect of the contract or benefit.

(3) Clauses (1)(a) and (b) and (2)(a) and (b) do not apply to contracts in respect of further duties in the service of the Government of the Province.

(4) Subsections (1) and (2) do not apply if the conditions on which the contract or benefit is awarded, approved or granted are the same for all persons similarly entitled. 2010, c. 35, s. 26.

#### **Application for exemption from Section 26**

27 (1) A former member or former public employee may apply to the Commissioner for an exemption from the application of Section 26 with respect to a contract or benefit or a class of contracts or benefits.

(2) On the application of a former member or former public employee, the Commissioner may exempt the contract or benefit or class of contracts or benefits from the application of Section 26 if in the opinion of Commissioner

(a) the consideration and terms of the contract or benefit are fair and reasonable; and

(b) it is not contrary to the public interest to exempt the contract or benefit or class of contracts or benefits from the application of Section 26.

(3) The Commissioner may impose any terms and conditions that the Commissioner considers appropriate on an exemption granted pursuant to this Section. 2010, c. 35, s. 27.

POWERS AND DUTIES OF CONFLICT  
OF INTEREST COMMISSIONER

**Opinion and recommendations**

**28 (1)** A member or public employee may, by application in writing, request that the Commissioner give an opinion and recommendations on any matter respecting the member or public employee pursuant to this Act.

**(2)** An opinion provided pursuant to subsection (1) must state the facts and any other considerations on which it is based.

**(3)** The Commissioner may make such inquiries as the Commissioner considers appropriate and provide the member or public employee with a written opinion and recommendations.

**(4)** The opinion and recommendations of the Commissioner are confidential, but may be released

- (a) by the member or public employee;
- (b) with the consent in writing of the member or public employee; or
- (c) by the Commissioner in circumstances if the Commissioner considers it necessary and appropriate in the public interest.

**(5)** A member or public employee who acts on the opinion and recommendations given by the Commissioner is and is deemed not to be in contravention of this Act with respect to the matters dealt with in the opinion and recommendation. 2010, c. 35, s. 28.

**Promotion of understanding of duties under Act**

**29** The Commissioner may take such steps as are necessary to promote the understanding by members and public employees of their duties under this Act including preparing and disseminating written information concerning their obligations under this Act. 2010, c. 35, s. 29.

**Advice**

**30 (1)** The Commissioner may give advice and recommendations of general application to members, public employees, former members and former public employees on any matter concerning their obligations under this Act.

**(2)** A member, public employee, former member or former public employees may rely on a written opinion given pursuant to subsection (1) in respect of facts and considerations stated in the opinion if the member, public employee, former member or former public employee acts in accordance with the Commissioner's recommendations. 2010, c. 35, s. 30.

**Inquiry and jurisdiction**

**31 (1)** Upon resolution of the House of Assembly or the application of a person who states under oath that that person has reasonable and probable grounds to believe a member or public employee is in contravention of this Act or the regulations and who produces sufficient evidence in support of the allegation to

satisfy the Commissioner that there is a reasonable probability that the contravention has occurred, the Commissioner shall inquire into the allegation.

(2) The Commissioner may inquire into a possible contravention of this Act or the regulations if evidence of an essential element of the possible contravention can be found in information disclosed to the Commissioner but which is not available to be examined by the public pursuant to this Act.

(3) The Commissioner may engage the services of any person necessary to assist with the duties of the Commissioner pursuant to this Section.

(4) The Commissioner has jurisdiction to inquire into actions or omissions by a former member or former public employee if the application or inquiry by the Commissioner commences within two years after the former member or former public employee ceased to be a member or public employee. 2010, c. 35, s. 31.

#### **Decision following inquiry**

**32 (1)** Where the Commissioner conducts an inquiry pursuant to this Act, the Commissioner may

(a) determine that there has been no contravention of this Act or the regulations;

(b) determine that there has been a contravention of this Act or the regulations and direct the member or public employee to, where applicable,

(i) file or amend a disclosure statement within the time prescribed by order,

(ii) discontinue association with a contract or agreement in which the member is prohibited from participating,

(iii) return any gain realized in respect of promoting a bill, resolution, matter or thing submitted or intended to be submitted to the House of Assembly, a committee of the Assembly, the Executive Council or a committee of the Executive Council,

(iv) return any personal benefit improperly obtained by the member;

(c) fine the person who contravened this Act or the regulations in an amount not exceeding \$10,000;

(d) refer the matter to the Supreme Court of Nova Scotia for a determination.

(2) A copy of the decision of the Commissioner at an inquiry must be filed with the Prothonotary at Halifax.

(3) The Commissioner may refer to the Supreme Court the failure of a member or public employee to comply with an order issued by the Commissioner pursuant to this Act.

- Court,
- (4) Where the Commissioner refers a matter to the Supreme Court,
- (a) the Commissioner shall
    - (i) instruct counsel to commence an application in the Supreme Court, and
    - (ii) determine the parties to the application;
  - (b) the Commissioner shall take no further part in the proceedings, as a witness or otherwise; and
  - (c) the judge of the Supreme Court dealing with the application shall
    - (i) hear the evidence and argument presented by the parties, and
    - (ii) determine on the basis of the evidence presented whether a contravention of this Act or the regulations or a direction of the Commissioner has occurred.
- (5) Where the judge of the Supreme Court determines that a contravention of this Act or the regulations or a direction of the Commissioner has occurred, the judge may
- (a) order the filing or amendment of a disclosure statement;
  - (b) order a member or public employee to discontinue association with a contract or agreement in which the member or public employee is prohibited from participating;
  - (c) order a member or public employee to return any personal benefit improperly obtained by the member or public employee;
  - (d) fine the person that contravened this Act or the regulations or a direction of the Commissioner in an amount not exceeding \$10,000;
  - (e) suspend a member or public employee on such terms and conditions as the judge prescribes;
  - (f) declare that a member ceases to be a member of the Executive Council;
  - (g) declare vacant the seat of a member.
- (6) Where the judge declares vacant the seat of a member, the seat of that member is and is deemed to be vacant upon the expiration of 30 days from the making of the order or upon the determination of any appeal of the matter, whichever is later, and the seat remains vacant until an election is held in the electoral district of the member. 2010, c. 35, s. 32.

#### **Appeal to Nova Scotia Court of Appeal**

- 33 (1) In this Section, “person affected” includes the person who initiated the request for an inquiry.

(2) A finding, direction, determination or order of the Commissioner or a judge made pursuant to Section 32 may be appealed to the Nova Scotia Court of Appeal by the person affected within 30 days of the making of the finding, direction, determination or order.

(3) Where an appeal has been filed as provided by law, a judge of the Court of Appeal may, upon application by the person appealing, stay the order from which the appeal has been taken pending the determination of the appeal. 2010, c. 35, s. 33.

#### **Costs and other relief**

34 Where the Commissioner determines that an allegation of a contravention of this Act is frivolous or vexatious, the Commissioner shall dismiss the matter and may order the person who made the allegation to pay costs or damages, or both, to the member or public employee, including reimbursement of the actual expenses of the member or public employee incurred in responding to the allegation, and grant such other relief as the Commissioner may determine. 2010, c. 35, s. 34.

### GENERAL

#### **Regulations**

- 35 (1) The Governor in Council may make regulations
- (a) prescribing forms to be used for the purpose of this Act;
  - (b) prescribing fees for the purpose of this Act;
  - (c) defining any word or expression used and not defined in this Act;
  - (d) respecting any matter the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 2010, c. 35, s. 35.

CHAPTER C-47

**An Act Respecting  
Conservation Easements**

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**Short Title**

**1** This Act may be cited as the *Conservation Easements Act*. 2001, c. 28, s. 1.

**Interpretation**

**2** In this Act,

“conservation easement” means a conservation easement within the meaning of Section 4;

“easement holder” means an eligible body that is entitled, from time to time, to enforce the rights and privileges over land contained in a conservation easement;

“eligible body” means a body that is, under Section 8, eligible to be an easement holder;

“former Act” means Chapter 2 of the Acts of 1992, the *Conservation Easements Act*;

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

“municipality” means a regional municipality, municipal unit or village as defined by the *Municipal Government Act*;

“owner” means the owner of land over which a conservation easement is granted, and includes any heirs, executors, administrators, successors or assigns of the grantor of the conservation easement, any person who becomes the owner or occupier of the land after the conservation easement is created and, for greater certainty, the Crown in right of the Province, the Crown in right of Canada or a municipality. 2001, c. 28, s. 2; 2012, c. 18, s. 1.

### Application of Act

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

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

(3) For greater certainty, the persons referred to in subsections (1) and (2) are subject to an order and other remedies pursuant to this Act and the regulations.

(4) This Act applies with respect to an easement or covenant entered into pursuant to the former Act and in effect immediately before January 18, 2002, as if the easement or covenant were a conservation easement within the meaning of this Act.

(5) Nothing in this Act affects a right or a remedy with respect to an easement under any other Act or under the common law or equity if that right or remedy is not inconsistent with any right or remedy under this Act.

(6) An interest in real property in existence at the time a conservation easement is created is not affected by the conservation easement unless the owner of the interest is a party to the conservation easement or consents to it.

(7) This Act does not affect the power of a court to modify or terminate a conservation easement in accordance with the principles of law and equity. 2001, c. 28, s. 3; 2012, c. 18, s. 2.

### Nature and purpose of conservation easement

**4** A conservation easement is an agreement entered into between an owner and an eligible body that

(a) grants rights and privileges to the easement holder over the owner’s land that relate to the purposes for which the conservation easement is granted;

(b) may impose obligations, either positive or negative, on the owner or the easement holder, or both, respecting the owner’s land that relate to the purposes for which the conservation easement is granted; and

(c) is made for the purpose of protecting, restoring or enhancing land primarily dedicated for the protection of biodiversity and natural processes that

(i) contains natural ecosystems or constitutes the habitat of rare, threatened or endangered plant or animal species,

- (ii) contains outstanding botanical, zoological, geological or morphological features,
  - (iii) exhibits exceptional and diversified scenery,
  - (iv) provides a haven for concentrations of birds and animals,
  - (v) provides opportunities for scientific or educational programs in aspects of the natural environment,
  - (vi) is representative of the ecosystems, landforms or landscapes of the Province, or
  - (vii) meets any other purpose prescribed by the regulations.
- 2001, c. 28, s. 4; 2012, c. 18, s. 3.

#### **Duration and effect of conservation easement**

**5 (1)** A conservation easement may exist for a stated period or in perpetuity.

**(2)** An easement holder may not, by possession, occupation or use of an owner's land, whether in accordance with the terms of the conservation easement or otherwise, obtain any possessory or prescriptive title in or to the land.

**(3)** An owner is not liable for a breach of a conservation easement that occurs after the owner ceases to own the land. 2001, c. 28, s. 5; 2012, c. 18, s. 4.

#### **Conservation easement runs with land**

**6** Subject to this Act, a conservation easement, whether positive or negative in nature, runs with the land to which it relates for the period, if any, set out in the conservation easement even though the easement holder owns no other land that would be accommodated or benefited by the conservation easement. 2001, c. 28, s. 6.

#### **Contents of conservation easement**

**7** A conservation easement must contain

- (a) the names and mailing addresses of the parties to the conservation easement;
- (b) the unique parcel identification number that is assigned to a parcel by the Department of Service Nova Scotia, for parcels that are not land registered, a metes and bounds description of the land to which the conservation easement applies;
- (c) a sketch or plan that depicts the land to which the conservation easement relates and, where the conservation easement applies to only a portion of the parcel, a drawing showing the location of the conservation easement on the parcel;
- (d) where the conservation easement does not exist in perpetuity, the period for which the conservation easement is to exist;
- (e) the specific purpose for which the conservation easement is granted;

- (f) the practices permitted, restricted or prohibited on the land to which the conservation easement relates and a description of those practices;
- (g) the conservation, restoration or enhancement practices that may be undertaken by the easement holder; and
- (h) any other information prescribed by the regulations. 2001, c. 28, s. 7; 2012, c. 18, s. 5.

#### **Eligible bodies**

**8** Any of the following bodies is eligible to hold a conservation easement:

- (a) the Crown in right of the Province or any agency of the Crown in right of the Province;
- (b) the Crown in right of Canada or any agency of the Crown in right of Canada;
- (c) a municipality or any agency of a municipality;
- (d) any of the 13 Nova Scotia Mi'kmaw bands or any legal organization representing two or more of the bands;
- (e) any organization that was, immediately before this Act comes into force, designated by the Governor in Council as a conservation organization under the former Act;
- (f) any other organization designated pursuant to the regulations. 2001, c. 28, s. 8; 2012, c. 18, s. 6.

#### **Amendment of conservation easement**

**9** A conservation easement may be amended by written agreement between the owner and the easement holder if the amendment supports or enhances the stated purpose of the conservation easement. 2001, c. 28, s. 9; 2012, c. 18, s. 7.

#### **Assignment of conservation easement**

**10** A conservation easement may, subject to any terms in the conservation easement, be assigned by the easement holder in writing to any eligible body. 2001, c. 28, s. 10; 2012, c. 18, s. 8.

#### **Filing of conservation easement, amendment or assignment**

**11 (1)** The easement holder shall submit the conservation easement and any amendment or assignment of it for filing with the appropriate registry of deeds and shall, within 30 days after filing, forward a copy of the conservation easement, amendment or assignment to the Minister.

**(2)** A conservation easement does not create an interest in land until the conservation easement is filed pursuant to the *Registry of Deeds Act* or the *Land Registration Act*. 2012, c. 18, s. 9.

#### **Conservation easement does not lapse**

- 12** A conservation easement does not lapse by reason only of
- (a) non-enforcement;

- (b) the use of the land to which the easement relates for a purpose that is inconsistent with the purposes of the easement; or
- (c) a change in the use of land that surrounds or is adjacent to the land to which the easement relates. 2001, c. 28, s. 12.

#### **Termination or assumption of conservation easement**

**13 (1)** A conservation easement may be terminated by a written agreement between the easement holder and the owner.

**(2)** Where a written agreement is made pursuant to subsection (1), the easement holder shall, within 90 days of the date of the agreement, file a copy of the agreement with the appropriate registry of deeds and send a copy to the Minister.

**(3)** Where an easement holder ceases to exist, the owner shall notify the Minister in writing that the easement holder no longer exists and the Minister shall, within 90 days of receiving the notice, send a copy of the notice to all the eligible bodies.

**(4)** Within 90 days after the notice from the Minister has been sent to the eligible bodies pursuant to subsection (3), any eligible body may notify the Minister in writing of its intention to elect to assume the obligations of the easement holder referred to in the notice and accept the rights and privileges respecting the conservation easement.

**(5)** Where more than one eligible body notifies the Minister pursuant to subsection (4), the Minister shall determine which eligible body will be permitted to assume the obligations of the easement holder referred to in the notice and accept the rights and privileges respecting the conservation easement.

**(6)** The Minister shall notify the eligible body that is permitted to assume the rights, privileges and obligations of the easement holder pursuant to subsection (4) or (5), and the eligible body shall send the owner a written notice advising the owner of the assumption of obligations, rights and privileges.

**(7)** Where no eligible body notifies the Minister of its intention to assume the obligations of an easement holder that has ceased to exist, the Minister may elect to assume the obligations of the easement holder and accept the rights and privileges respecting the conservation easement by giving the owner a written notice advising of the election within 180 days after the Minister has sent the notices to the eligible bodies pursuant to subsection (3).

**(8)** A written notice referred to in subsection (4) or (5) must be registered in the appropriate registry of deeds.

**(9)** Where neither the Minister nor an eligible body elects to assume the obligations of the easement holder, the conservation easement is terminated and the Minister shall file a notice of termination in the appropriate registry of deeds and provide a copy of the notice to the owner. 2001, c. 28, s. 13; 2012, c. 18, s. 10.

**Easement holder no longer eligible body**

**14** Where an easement holder ceases to be an eligible body, the easement holder is deemed to have ceased to exist for all purposes of Section 13. 2001, c. 28, s. 14.

**Enforcement by action in Supreme Court**

**15 (1)** The obligations in a conservation easement, whether positive or negative, may be enforced by an action in the Supreme Court of Nova Scotia by the owner or the easement holder.

**(2)** In an action pursuant to subsection (1), the Supreme Court of Nova Scotia may

(a) grant any relief or remedy available at common law to any of the parties referred to in subsection (1);

(b) order the defendant to take any action the Court considers appropriate to restore or remedy any harm to the land to which the conservation easement relates;

(c) prohibit any activity on the land to which the conservation easement relates that the Court considers contrary to any of the purposes of the conservation easement. 2001, c. 28, s. 15.

**Regulations**

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

(a) prescribing purposes for which a conservation easement may be granted;

(b) designating organizations for the purpose of clause 8(f);

(c) respecting the information that must be included in a conservation easement;

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

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

**(2)** The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 2001, c. 28, s. 16.

**Former Act**

**17** The repeal of the former Act does not prevent the Governor in Council from revoking a designation of an organization as a designated conservation organization pursuant to the former Act. 2001, c. 28, s. 17.

CHAPTER C-48

**An Act Respecting the Protection  
of Constables and Other Officers**

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**Short title**

**1** This Act may be cited as the *Constables Protection Act*. R.S., c. 88, s. 1.

**Interpretation**

**2** In this Act,

“constable” means a constable or police or other officer and any person acting in the constable’s aid;

“justice” means a justice of the peace and any other person having by law authority to issue a warrant or other process commanding a constable to perform any duty specified therein. R.S., c. 88, s. 2.

**Prerequisite to bringing action**

**3** Before any action is brought against a constable for anything done in obedience to a warrant or other process under the hand and seal of a justice, a demand in writing of the perusal and copy of the warrant, signed by the person making the same, must be served upon the constable personally or left at the constable’s usual place of abode for the space of six days. R.S., c. 88, s. 3.

**Judgment**

**4 (1)** Where, after such demand and compliance therewith, an action is brought against the constable without making the justice a party thereto, on the proof of the warrant or other process upon the trial, judgment must be given for the defendant, notwithstanding any want of jurisdiction in the justice.

**(2)** Where the action is brought against the constable jointly with the justice, then, on proof of the warrant or other process, judgment must be given for the constable, and, where judgment is given against the justice with costs, the costs of the constable must be paid to the constable by the justice directly. R.S., c. 88, s. 4.

**Limitation period**

**5** No action may be brought against any constable unless it is commenced within six months after the cause of action has accrued. R.S., c. 88, s. 5.

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CHAPTER C-49

**An Act for Expediting  
the Decision of Constitutional  
and Other Provincial Questions**

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**Short title**

**1** This Act may be cited as the *Constitutional Questions Act*. R.S., c. 89, s. 1.

**Interpretation**

**2** In this Act, “Court” means the Nova Scotia Court of Appeal. R.S., c. 89, s. 2.

**Reference to Court**

**3** The Governor in Council may refer to the Court for hearing or consideration, any matter that the Governor in Council thinks fit to refer, and the Court shall thereupon hear and consider the same. R.S., c. 89, s. 3.

**Opinion of Court**

**4** The Court shall certify to the Governor in Council its opinion on the matter referred, with the reasons therefor, which are to be given in like manner as in the case of a judgment in an ordinary action, and any judge who differs from the opinion of the majority shall, in like manner, certify the judge’s opinion, with the judge’s reasons therefor, to the Governor in Council. R.S., c. 89, s. 4.

**Attorney General of Canada**

**5** Where the matter relates to the constitutional validity of any Act that has heretofore been, or hereafter is passed by the Legislature, or of any provision in any such Act, the Attorney General of Canada must be notified of the hearing, in order that the Attorney General of Canada may be heard if the Attorney General of Canada thinks fit. R.S., c. 89, s. 5.

**Interested persons**

6 The Court may direct that any person interested, or, where there is a class of persons interested, any one or more persons as representatives of such class, be notified of the hearing, and such persons are entitled to be heard. R.S., c. 89, s. 6.

**Appointment of counsel**

7 Where any interest affected is not represented by counsel, the Court may, in its discretion, request counsel to argue the case in such interest, and the reasonable expenses thereby occasioned must be paid out of the General Revenue Fund. R.S., c. 89, s. 7.

**Opinion as judgment**

8 The opinion pronounced by the Court on the matter so referred is deemed a judgment of the Court, and an appeal lies therefrom as from a judgment in an action. R.S., c. 89, s. 8.

**Reference arising out of agreement**

9 (1) Where a matter to be referred to the Court under this Act relates to questions arising out of an agreement between the Government of Canada and the Government of the Province that provides for a reference to the Court to hear, consider and determine questions so arising, the form and terms of the reference must be determined as provided in the agreement and, where no such provision is made, are such as are agreed upon by the parties to the agreement or, where they cannot agree, are such as are determined by the Chief Justice of the Province upon the application of either party.

(2) The Attorney General of Canada and the attorney general of any province of Canada that has entered into an agreement of a like nature and having like purposes to the agreement referred to in subsection (1) may appear before the Court and be heard as a party in respect of any matter referred under this Act pursuant to that agreement. R.S., c. 89, s. 9.

**Notice to Attorney General**

10 (1) In this Section,

“court” means the Supreme Court of Nova Scotia, the Family Court, a judge of either of those courts, a judge of the Provincial Court or an administrative tribunal in the Province;

“law” includes an Act of the Parliament of Canada or of the Legislature, and includes a proclamation, regulation or order in council made pursuant to any such Act;

“regulation” means a regulation as defined in the *Regulations Act*;

“remedy” means a remedy provided pursuant to section 24 of the *Canadian Charter of Rights and Freedoms* but does not include a remedy of exclusion of evidence or a remedy consequential on exclusion of evidence.

(2) Where, in a proceeding in a court in the Province, other than a proceeding in which the Attorney General for the Province is a party, is represented by counsel or has appointed counsel,

- (a) the constitutional validity or constitutional applicability of any law is brought into question; or
- (b) an application is made to obtain a remedy,

the court may not adjudge the law to be invalid or inapplicable nor may it grant the remedy until after notice is served on the Attorney General in accordance with this Section.

(3) Where, in a court in the Province, the validity or applicability of a proclamation, regulation or order in council made or purportedly made in the execution of a power given by an Act of the Legislature is brought into question on grounds other than those mentioned in subsection (2), the court may not adjudge the proclamation, regulation or order in council to be invalid until after notice is served on the Attorney General for the Province in accordance with this Section.

(4) Subject to subsection (5), a notice mentioned in subsection (2) or (3) is required to be served at least 14 days before the day of argument.

(5) The court may, on an *ex parte* application made for the purpose, order an abridgement of the time for service of a notice mentioned in subsection (2) or (3).

- (6) A notice mentioned in subsection (2) or (3) must
- (a) be headed in the action, cause, matter or proceeding in which the question arises or application is made;
  - (b) state
    - (i) the law or provision thereof in question, or
    - (ii) the right or freedom alleged to be infringed or denied;
  - (c) state the day and place for the argument of the question; and
  - (d) give the particulars that are necessary to show the point to be argued.

(7) The Attorney General for the Province is entitled as of right to appear and be heard either in person or through counsel in any action, cause, matter or proceeding to which subsection (2) or (3) applies.

(8) Where the Attorney General for the Province appears in an action, cause, matter or proceeding to which subsection (2) or (3) applies, the Attorney General is a party for the purposes of appeal from an adjudication therein respecting the validity or applicability of a law or respecting entitlement to a remedy. R.S., c. 89, s. 10; 1999 (2nd Sess.), c. 8, s. 4.

CHAPTER C-50

**An Act to Provide for the Stabilization  
of Labour Relations Affecting  
Certain Construction Projects**

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

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**Short title**

**1** This Act may be cited as the *Construction Projects Labour Relations Act*. 2016, c. 18, s. 1.

**Interpretation**

**2** In this Act,

“accredited employers’ organization” means an organization of employers that is accredited under the *Trade Union Act* to bargain collectively for a bargaining unit of unionized employers in the construction industry;

“bargaining agent” means a trade union that acts on behalf of employees

- (a) in collective bargaining;
- (b) as a party to a voluntary recognition agreement with their employer; or
- (c) as a party to a collective agreement with their employer;

“Board” means the Labour Board established by the *Labour Board Act*;

“collective agreement” means a signed agreement in writing between an employer or an accredited employers’ organization acting on behalf of an employer and a certified bargaining agent of its employees on behalf of the employees containing terms or conditions of employment of employees that include provisions with reference to rates of pay and hours of work;

“construction contractor” means a person who undertakes a designated construction project, whether for the benefit of the construction contractor or for the benefit of another, or who enters into a contract, agreement or other arrangement whereby the construction contractor agrees to undertake a designated construction project;

“construction industry” means the on-site constructing, erecting, altering, decorating, repairing or demolishing of buildings, structures, roads, sewers, water mains, pipelines, tunnels, shafts, bridges, wharves, piers, canals or other works;

“construction subcontractor” means a person who enters into a contract, agreement or other arrangement with a construction contractor, or with another construction subcontractor, for the performance of any construction work on a designated construction project;

“council of trade unions” means a council that is formed for the purpose of representing, or that according to established bargaining practice represents, trade unions;

“designated construction project” means

- (a) a construction project that
  - (i) involves the on-site construction of
    - (A) a natural gas liquefaction plant in Guysborough County or Richmond County, or
    - (B) a green hydrogen production facility in the Province, which may include associated onshore and offshore wind power facilities,
 and which, subject to the regulations, may include the construction of any related infrastructure,
  - (ii) has a total projected cost or value in excess of \$2,000,000,000, and
  - (iii) is expected to involve the employment of persons who are represented by three or more trade unions; or
- (b) an industrial construction project designated by the regulations;

“employee” means an employee as defined in Part II of the *Trade Union Act* who is employed or engaged by an employer;

“employer” means a construction contractor or construction subcontractor who employs, or in the preceding 12 months has employed, more than one employee;

“lockout” includes the closing of a place of employment, a suspension of work or a refusal by an employer to continue to employ a number of its employees for the purpose of compelling its employees, or to aid another employer in compelling its employees, to agree to terms or conditions of employment;

“Minister” means the Minister of Labour, Skills and Immigration;

“project agreement” means an agreement concerning a designated construction project that

(a) contains the terms and conditions of employment, including provisions respecting rates of pay and hours of work, for the unionized employees in any trade that is or may reasonably be expected to be involved in the designated construction project; and

(b) is declared by the Board to be a project agreement;

“proponent” means a person for whose benefit a designated construction project is being undertaken;

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

“trade union” means a trade union that, according to established trade union practices, pertains to the construction industry, and includes a council of trade unions;

“work stoppage” means any discontinuance or cessation of all or any part of the normal work or activity carried on by an employer and its employees on a designated construction project, except termination of all or any part of the designated construction project or a stoppage in work that is

(a) agreed upon by the employer and its employees;

(b) permitted by this Act, the *Occupational Health and Safety Act* or any provision respecting occupational health and safety contained in another enactment; or

(c) required by or under any enactment. 2016, c. 18, s. 2; 2023, c. 5, s. 1.

#### **Conflict with Trade Union Act**

**3** In the event of a conflict between this Act and the *Trade Union Act*, this Act prevails. 2016, c. 18, s. 3.

#### **Supervision and management of Act**

**4** The Minister is responsible for the supervision and management of this Act. 2016, c. 18, s. 4.

#### **Project agreement reached before Act comes into force**

**5 (1)** Where

(a) a proposed project agreement between the accredited employers’ organizations and the bargaining agents for the unionized

employees in all of the trades that are or may reasonably be expected to be involved in the construction of a designated construction project, other than a designated construction project referred to in clause (b) of the definition “designated construction project” in Section 2,

(i) is reached before November 10, 2016, or

(ii) is reached before or after November 10, 2016, and supersedes a proposed project agreement that was reached before November 10, 2016, but not ratified; and

(b) the agreement is ratified, whether before or after November 10, 2016, by the accredited employers’ organizations and the bargaining agents for the unionized employees in at least 85% of the trades that are or may reasonably be expected to be involved in the construction referred to in clause (a),

the proponent may provide a copy of the agreement and written notice of the ratification of the agreement to the Board and request that the Board declare the agreement to be a project agreement and declare the project agreement in effect.

(2) Where the proposed project agreement has been ratified in accordance with clause (1)(b), every accredited employers’ organization and bargaining agent that entered into the agreement is a party to the agreement, irrespective of whether it ratified the agreement.

(3) As soon as practicable after receiving the proponent’s request and a copy of the proposed project agreement and written notice of the ratification of the agreement, the Board shall issue an order declaring the agreement to be a project agreement and declaring the project agreement to be in effect. 2016, c. 18, s. 5.

#### **Notice of request for project agreement**

6 (1) A proponent who wishes to have a project agreement shall provide a notice in writing of its request to have a project agreement to

(a) every accredited employers’ organization;

(b) the bargaining agent for the unionized employees in any trade that is or may reasonably be expected to be involved in the designated construction project;

(c) every council of trade unions to which a bargaining agent referred to in clause (b) is a member;

(d) any entity prescribed by the regulations; and

(e) the Board.

(2) The notice must include

(a) a general description of the designated construction project, including the geographic area of the designated construction project and any related infrastructure to be constructed;

(b) sufficient information to indicate the various kinds of work that may reasonably be expected to be involved in the designated construction project; and

(c) a list of the trades that are or may reasonably be expected to be involved in the designated construction project.

(3) The proponent shall provide the Board with evidence, in such form as the Board may require, that the notice has been provided to every accredited employers' organization, bargaining agent, council of trade unions and other entity referred to in clauses (1)(a) to (d).

(4) The Board shall publish the notice on its website as soon as practicable after receiving the notice and the evidence referred to in subsection (3). 2016, c. 18, s. 6.

#### **Powers of Board re notice**

7 (1) Subject to subsection (2), upon application by a recipient of the notice referred to in subsection 6(1) or by an accredited employers' organization or bargaining agent that the Board determines should have been provided with the notice, the Board may issue an order declaring that

(a) the construction project referred to in the notice is not a designated construction project;

(b) a recipient of the notice is not a potential participant in the designated construction project;

(c) an accredited employers' organization or bargaining agent that was not provided with the notice is a potential participant in the designated construction project;

(d) a trade not included in the list of trades referred to in clause 6(2)(c) is a trade that is or may reasonably be expected to be involved in the designated construction project;

(e) a trade included in the list of trades referred to in clause 6(2)(c) is not a trade that is or may reasonably be expected to be involved in the designated construction project;

(f) infrastructure described in the general description of the designated construction project is not related infrastructure.

(2) The Board may not consider an application under subsection (1) made more than 15 business days after the day on which the Board publishes the notice on its website.

(3) The parties to an application under subsection (1) are the applicant, the proponent and such other persons as the Board may specify.

(4) Upon the expiry of the period during which applications may be made under subsection (2) and the conclusion of any applications made under subsection (1), the Board shall provide notice thereof in writing and a copy of any orders issued under subsection (1) to

(a) the proponent;

(b) every recipient of the notice referred to in subsection 6(1), other than a recipient whom the Board has declared to be not a potential participant in the designated construction project; and

(c) any accredited employers' organization or bargaining agent that was not provided with the notice referred to in subsection 6(1) and whom the Board has declared to be a potential participant in the designated construction project. 2016, c. 18, s. 7.

### **Negotiations for project agreement**

**8 (1)** Subject to subsection (2),

(a) within 15 business days of receiving the notice referred to in subsection 7(4), the accredited employers' organizations and bargaining agents that received the notice shall enter into negotiations for a project agreement; and

(b) no employer shall commence or continue work on the designated construction project in respect of which the project agreement is sought until

(i) the project agreement is in effect, or

(ii) the proponent provides notice in writing to the recipients of the notice referred to in subsection 7(4) that the proponent is rescinding its request to have a project agreement.

**(2)** Where the Board has issued an order declaring that the construction project referred to in the notice referred to in subsection 7(1) is not a designated construction project, subsection (1) does not apply.

**(3)** The proponent may facilitate the negotiations for a project agreement.

**(4)** A proposed project agreement is ratified when, for at least 85% of the trades that are or may reasonably be expected to be involved in the designated construction project, the bargaining agent for the unionized employees in the trade and the accredited employers' organization that bargains collectively for the employers of the unionized employees notify the proponent in writing of their ratification of the proposed project agreement.

**(5)** Where a proposed project agreement has been ratified, every accredited employers' organization and bargaining agent that received the notice referred to in subsection 7(4) is a party to the agreement, irrespective of whether it assented to the agreement.

**(6)** The proponent may provide a copy of the proposed project agreement and written notice of the ratification of the agreement to the Board and request that the Board declare the agreement to be a project agreement and declare the project agreement to be in effect.

**(7)** As soon as practicable after receiving the proponent's request and a copy of the proposed project agreement and written notice of the ratification of the agreement required under subsection (4), the Board shall issue an order declaring the agreement to be a project agreement and declaring the project agreement to be in effect. 2016, c. 18, s. 8.

**Effect of project agreement**

**9 (1)** Once declared by the Board to be in effect, a project agreement is binding upon the accredited employers' organizations and bargaining agents that are parties to the project agreement, the unionized employees in the trades to which the project agreement applies and the employers of the unionized employees.

**(2)** Where a project agreement purports to supersede the collective agreements otherwise applicable to the designated construction project to which the project agreement applies, the project agreement is deemed to be a collective agreement and, once declared by the Board to be in effect, applies in respect of the designated construction project and, to that extent, notwithstanding any other enactment, prevails over any other collective agreement that would otherwise govern the employment relationship between the employers and their employees in respect of work related to the designated construction project.

**(3)** Where a project agreement purports to modify the collective agreements otherwise applicable to the designated construction project to which the project agreement applies, the project agreement, once declared by the Board to be in effect, modifies the collective agreements to the extent provided for in the project agreement and the collective agreements, as modified, apply in respect of the designated construction project.

**(4)** For greater certainty, a project agreement does not apply in respect of any work not related to the designated construction project and

(a) where the project agreement purports to supersede the collective agreements otherwise applicable to the designated construction project, the collective agreements apply for the purpose of the work not related to the designated construction project; or

(b) where the project agreement purports to modify the collective agreements otherwise applicable to the designated construction project, the unmodified collective agreements apply for the purpose of the work not related to the designated construction project. 2016, c. 18, s. 9.

**Amendment of project agreement**

**10** A project agreement may be amended

(a) in accordance with clause 11(3)(a) or Section 13; or

(b) with the consent of all parties to the project agreement. 2016, c. 18, s. 10.

**Application by dissenting bargaining agent**

**11 (1)** A bargaining agent that did not ratify a project agreement to which the bargaining agent is a party may apply to the Board for an amendment to the project agreement if the project agreement would result in a reduction in the total wages and benefits, expressed as a rate, of an employee represented by the bargaining agent that is larger, proportionally, than the largest reduction that would apply to an employee represented by a bargaining agent that ratified the project agreement.

(2) The Board may not consider an application under subsection (1) made more than 10 business days after the day on which the Board declares the project agreement to be in effect.

(3) Within 30 business days of an application being made under subsection (1), the Board shall hear the application and may

(a) make an order amending the project agreement so that the amount of the reduction in the total wages and benefits, expressed as a rate, of an employee represented by the applicant bargaining agent is

(i) greater than or equal to the largest reduction that would apply to an employee represented by a bargaining agent that ratified the project agreement, and

(ii) less than the amount of the reduction that the employee represented by the applicant bargaining agent would otherwise be subject to under the project agreement in the absence of the order; or

(b) dismiss the application. 2016, c. 18, s. 11.

#### **Expiry of project agreement**

**12** Upon being declared by the Board to be in effect, a project agreement remains in effect, subject to any amendments made under this Act, until the completion or abandonment of the designated construction project, notwithstanding any provision in the project agreement or in any enactment to the contrary. 2016, c. 18, s. 12.

#### **Amendment to provide for additional trade**

**13** Where a designated construction project is the subject of a project agreement and the proponent identifies a trade to which the project agreement does not apply as being a trade that is or may reasonably be expected to be involved in the designated construction project,

(a) the project agreement may, in accordance with the regulations, be amended to

(i) provide for the involvement of the trade in the designated construction project, and

(ii) include the bargaining agent for the unionized employees in the trade and the accredited employers' organization that bargains collectively for the employers of the unionized employees as parties to the project agreement; and

(b) no construction contractor or construction subcontractor who has been notified by the proponent that the trade is or may reasonably be expected to be involved in the designated construction project shall cause an employee in that trade to commence or continue work on the designated construction project until the project agreement has been amended to provide for the involvement of the trade. 2016, c. 18, s. 13.

**Jurisdiction of Board**

**14 (1)** The Board may, upon application by any person, decide any question that arises

- (a) under this Act;
  - (b) respecting the interpretation or application of this Act;
  - (c) respecting whether a person has contravened this Act;
- or
- (d) respecting the scope of a designated construction project.

**(2)** The Board may determine a question that is the subject of an application and may make any order it considers necessary to give effect to the intent and purpose of this Act, including, where the Board concludes that a person has contravened this Act, an order requiring the person to comply with this Act in any manner specified in the order. 2016, c. 18, s. 14.

**Prohibition of work stoppage**

**15 (1)** No employer, accredited employers' organization, trade union, officer or agent of a trade union, employee or other person shall call, declare, direct, authorize, engage in or otherwise aid, abet, counsel or procure a work stoppage by any means, including the picketing of the site of a designated construction project, in respect of a designated construction project for which a project agreement has been declared by the Board to be in effect.

- (2)** For greater certainty, subsection (1) does not affect
- (a) the right to strike of an employee who performs work to which the project agreement does not apply; or
  - (b) the right of an employer to lockout an employee who performs work to which the project agreement does not apply.

**(3)** Section 135 of the *Trade Union Act* does not apply in respect of a designated construction project for which a project agreement has been declared by the Board to be in effect.

**(4)** For greater certainty, Section 135 of the *Trade Union Act* does not preclude the negotiation and conclusion of a project agreement in accordance with this Act. 2016, c. 18, s. 15.

**Board proceedings and powers**

**16 (1)** In any application to the Board under this Act, the rules, regulations and practices applicable to applications and other proceedings before the Board under the *Trade Union Act* apply with necessary changes.

- (2)** Where an application is made under this Act, the Board
- (a) may make or cause to be made any examination of records or other inquiries and hold any hearings it considers necessary;

(b) may prescribe the nature of the evidence to be furnished to the Board; and

(c) has all of the powers and privileges conferred on the Board under the *Labour Board Act* and the *Trade Union Act*, which may be exercised in relation to this Act with necessary changes. 2016, c. 18, s. 16.

#### **Order of Board final**

17 An order of the Board made under this Act is final and cannot be questioned or reviewed in any court or tribunal. 2016, c. 18, s. 17.

#### **Effect on employers of non-unionized employees**

18 Nothing in this Act precludes

(a) a contractor or subcontractor in the construction industry who employs non-unionized employees from performing any aspect of a designated construction project; or

(b) the performance of any construction work on a designated construction project, for which a project agreement is in effect, by a construction subcontractor who employs non-unionized employees. 2023, c. 5, s. 2.

#### **Offence and penalty**

19 (1) A person who contravenes

(a) subsection 8(1), Section 13 or subsection 15(1); or

(b) an order of the Board made under subsection 14(2),

is guilty of an offence and liable on summary conviction to a fine of not more than \$1,000 in the case of an individual or \$10,000 in any other case.

(2) Where an offence under this Section is committed or continued on more than one day, the person who committed the offence is liable to be convicted for a separate offence for each day on which the offence is committed.

(3) A prosecution for an offence under this Section may be brought against an accredited employers' organization or a trade union in the name of the accredited employers' organization or trade union and, for the purpose of the prosecution,

(a) the accredited employers' organization or trade union is deemed to be a person; and

(b) any act or thing done or omitted by an officer or agent of the accredited employers' organization or trade union within the scope of the officer or agent's authority to act on behalf of the accredited employers' organization or trade union is deemed to be an act or thing done or omitted by the accredited employers' organization or trade union. 2016, c. 18, s. 19.

#### **Regulations**

20 (1) The Governor in Council may make regulations

(a) subject to subsection (2), designating industrial construction projects that the Governor in Council considers to be economically significant as designated construction projects;

(b) prescribing entities to whom a notice referred to in subsection 6(1) must be provided;

(c) respecting the amendment of a project agreement under clause 13(a);

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

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

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

(2) The Governor in Council may exercise the authority contained in clause (1)(a) only if the Minister has conducted a public consultation in respect of the industrial construction project.

(3) The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*, 2016, c. 18, s. 20.

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CHAPTER C-51

**An Act Respecting  
the Conduct of Consumer Creditors**

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

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**Short title**

**1** This Act may be cited as the *Consumer Creditors Conduct Act*. R.S., c. 91, s. 1.

**Interpretation**

**2** In this Act,  
“borrower” means a person who receives credit;  
“credit” means credit for which a borrower is required to pay and that is  
(a) given under an agreement between a seller and a buyer to purchase goods or services by which all or part of the purchase price is payable after the agreement is entered into; or  
(b) given by the advancement of money,  
and includes a transaction where a person, acting in the course of the person’s business, acquires from another person the other person’s right to any income tax refund or other payment by the Government of Canada or the Government of the Province that is due or will become due to the other person, but does not include credit extended  
(c) on the security of a mortgage of real property;  
(d) in respect of the sale of goods intended for resale; or  
(e) for industrial or business purposes of the borrower;  
“creditor” means a person who extends credit, the person’s agent or employee. R.S., c. 91, s. 2; 2012, c. 40, s. 38.

**Supervision of Act**

**3** This Act is under the general supervision of the Minister of Service Nova Scotia. R.S., c. 91, s. 3; 2012, c. 40, s. 39; 2014, c. 34, s. 4.

**Rules of conduct**

4 No creditor shall

(a) collect or attempt to collect money without first being satisfied that the money is owing by the borrower to the creditor;

(b) collect or attempt to collect money in excess of the amount owing by the borrower to the creditor;

(c) collect or attempt to collect money from a person who is not liable for the debt;

(d) make any charge against a borrower in addition to those contained in the agreement with that borrower or in a cost of borrowing statement furnished to the borrower;

(e) send any communication or make any call, for the purpose of demanding a debt, for which the creditor elects to make the charges payable by the recipient;

(f) continue to communicate with or continue to collect or attempt to collect money from

(i) a person, if that person has informed the creditor that the person is not the person sought by the creditor, unless the creditor first takes all reasonable precautions to ensure that that person is, in fact, the person sought by the creditor,

(ii) a borrower, if the borrower has notified the creditor in writing to communicate only with the borrower's legal adviser and an address for the legal adviser has been provided, or

(iii) a borrower, if the borrower has notified the creditor by registered mail that the debt is in dispute and requests that the creditor take the matter to court;

(g) use, without lawful authority, any summons, notice or demand, or other document, expressed in language of the general style or purport of any form used in any court, or printed or written or in the general appearance or format of any such form;

(h) in any way abuse or intimidate a borrower, any member of the borrower's family or household, any relative, neighbour, friend or acquaintance of the borrower, the borrower's employer or any person who has guaranteed to pay the debt of the borrower either orally or in writing to induce a person to pay money or to deliver up possession of property;

(i) make telephone calls or personal calls or written communications of such nature or with such frequency as to constitute harassment of the borrower, any member of the borrower's family or household, any relative, neighbour, friend or acquaintance of the borrower, the borrower's employer or any person who has guaranteed to pay the debt of the borrower;

(j) unless requested by the person being contacted, contact by telephone, personal call or electronic means or otherwise attempt to contact a person in relation to the collection of money or possession of property

(i) on a Sunday or any other day designated by the regulations,

- (ii) on any day other than a day referred to in subclause (i) except between the hours of 8:00 a.m. and 9:00 p.m.,
- (iii) on any day that falls during a consecutive seven-day period in which a creditor has contacted the person three times, or
- (iv) at such other times as may be prescribed by the regulations;
- (k) where using an automated call system, fail to provide a contact number for the borrower to call when leaving a message;
- (l) give any person, directly or indirectly, by implication or otherwise, any false or misleading information, including references to the police, a law firm, prison, credit history, court proceedings, a lien or garnishment;
- (m) contact or threaten to contact the employer of a borrower or any member of the borrower's family or household and give information that may adversely affect the employment or employment opportunities of the borrower or any member of the borrower's family or household;
- (n) falsely purport to be a police officer, sheriff or deputy sheriff while attempting to collect money or get possession of property;
- (o) publish or threaten to publish, either in print or through electronic means, a borrower's failure to pay;
- (p) communicate or attempt to communicate with any member of a borrower's family or household or any relative, neighbour, friend or acquaintance of a borrower, unless
  - (i) the person being contacted has guaranteed to pay the debt of the borrower and the contact is in respect of that guarantee,
  - (ii) the creditor does not have the borrower's home address or personal telephone number and the contact is for the sole purpose of obtaining the borrower's home address or personal telephone number, or
  - (iii) the borrower has requested that the creditor discuss the debt with that person;
- (q) communicate or attempt to communicate with the borrower's employer unless
  - (i) the employer has guaranteed to pay the debt of the borrower and the contact is in respect of that guarantee,
  - (ii) the contact is solely for the purpose of confirming the borrower's employment status, business title or business address and occurs only once, or
  - (iii) the contact is authorized in writing by the borrower;
- (r) directly or indirectly communicate to a borrower an intention to proceed with any legal action for which there is no lawful authority. R.S., c. 91, s. 4; 2012, c 40, s. 40.

**Waiver or release of rights void**

**5** Any waiver or release by a person of the rights, benefits, protections or remedies under this Act and any agreement that in any way limits or abrogates or

in effect limits or abrogates any such right, benefit, protection or remedy is void. 2012, c. 40, s. 41.

#### **Offence, penalty and time limit**

**6 (1)** Every person who violates or fails to comply with any provision of this Act or the regulations and every director of a corporation who knowingly concurs in a violation or failure to comply with any provision of this Act or the regulations is guilty of an offence and liable on summary conviction to a fine of not less than \$500 nor more than \$25,000 or to imprisonment for a term of not more than one year, or both.

**(2)** Where a corporation is convicted of an offence under subsection (1) it is liable to a penalty of not more than \$300,000.

**(3)** A prosecution under this Section may be commenced within three years after the date on which the offence is committed. R.S., c. 91, s. 5; 2012, c. 40, s. 42; 2018, c. 43, s. 3.

#### **Regulations**

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

(a) prescribing other days and times when a person may not be contacted in relation to the collection of money or possession of property for the purpose of clause 4(j);

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

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

**(2)** The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 2012, c. 40, s. 43.

CHAPTER C-52

**An Act to Provide for  
the Fair Disclosure of the Cost of Credit  
and for the Protection of Buyers  
of Consumer Goods**

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

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**Short title**

1 This Act may be cited as the *Consumer Protection Act*. R.S., c. 92, s. 1.

**Interpretation**

2 In this Act,

“borrower” means a person who receives credit;

“buyer” means a person who purchases goods or services on credit and includes the person’s agent, but does not include a person of a class or classes to whom this Act is declared by the regulations not to apply;

“cost of borrowing” means

(a) when used in relation to variable credit, the charges that the borrower is required to pay monthly or periodically on the unpaid balance from time to time; and

(b) when used in relation to a form of credit, other than variable credit, the amount by which the total sum that the borrower

is required to pay if the payments required are made as they become due exceeds

(i) in the case of credit given by the advancement of money, the aggregate of the sum actually received in cash by the borrower and by any person on the borrower's behalf, the sum remaining unpaid under a previous extension of credit, in an amount determined under Section 46, that the borrower and lender agree is to be consolidated with the credit then being extended, official fees and premiums for insurance paid or payable by the lender at the request of the borrower, or

(ii) in the case of a sale of goods or services, the aggregate of the cash price of the goods or services, the sum remaining unpaid under a previous extension of credit in an amount determined under Section 46, that the buyer and seller agree is to be consolidated with the credit then being extended, official fees and premiums for insurance paid or payable by the seller at the request of the buyer, less the sums, if any, credited as down payment or in respect of a trade-in or in respect of any other matter;

“credit” means credit for which a borrower is required to pay and that is

(a) given under an agreement between a seller and a buyer to purchase goods or services by which all or part of the purchase price is payable after the agreement is entered into; or

(b) given by the advancement of money,

but does not include credit extended

(c) on the security of a mortgage of real property;

(d) in respect of the sale of goods intended for resale; or

(e) for industrial or business purposes of the borrower;

“goods” includes tokens, coupons or other documents or things issued or sold by a seller to a buyer that are exchangeable or redeemable for goods or services;

“insurance” means insurance on the life or health of a borrower or buyer, or on property charged to secure payment of the indebtedness of a borrower or buyer to a lender or seller;

“lender” means a person who extends credit;

“Minister” means the Minister of Service Nova Scotia;

“official fees” means fees paid or payable to a public official in the Province for the filing or registration of an instrument relating to a credit transaction;

“person” means an individual, an association of individuals, a partnership or a corporation and includes an agent of any of them;

“Registrar” means the Registrar of Credit;

“regulations” means regulations made under this Act;

“seller” means a person who is in the business of selling goods or services to buyers and includes the person’s agent, but does not include a person or class of persons to whom this Act is by the regulations declared not to apply;

“trade-in” means consideration given by a buyer in a form other than money or an obligation to pay money;

“variable credit” means credit made available under an agreement whereby the lender agrees to make credit available to be used from time to time, at the option of the borrower, and, without limiting the generality of the foregoing, includes credit arrangements commonly known as revolving credit accounts, budget accounts, cyclical accounts and other arrangements of a similar nature. R.S., c. 92, s. 2; 1998, c. 8, s. 22; 1999, c. 4, s. 3; 2017, c. 9, s. 2.

### Registrar of Credit

**3** (1) The Minister shall appoint a Registrar of Credit who has the functions and duties set out in this Act and the regulations and such other functions and duties pursuant to this Act and the regulations as the Minister may determine.

(2) The Minister may, in the absence or incapacity of the Registrar or when the office of the Registrar is vacant, authorize another person to act in the Registrar’s stead.

(3) The Minister may appoint one or more deputy registrars as required to assist the Registrar in the performance of the Registrar’s duties.

(4) A deputy registrar may perform any of the duties and exercise any of the powers of the Registrar as directed by the Registrar.

(5) A person appointed or authorized to act pursuant to this Section must be employed pursuant to the *Civil Service Act* and that Act applies to that person. 2014, c. 39, s. 3.

### Functions of Registrar

**4** It is the function of the Registrar and the Registrar has power to

(a) investigate complaints regarding credit granting and persons engaged in business as lenders;

(b) conduct studies, inquiries and surveys for the purpose of obtaining information as to who are lenders in the Province, concerning their methods and practices of carrying on business, and to keep informed of developments or changes in the business of credit granting;

(c) consult with and co-operate with lenders and other interested persons and organizations to assist in the attainment of the purposes of this Act;

(d) disseminate information respecting methods of obtaining or granting credit, the practices of lenders, the costs of borrowing, the facilities available for obtaining loans or credit and such other information as the Registrar considers desirable for the purpose of creating an informed public;

(e) perform the duties and exercise the powers imposed or conferred upon the Registrar by this Act or the regulations;

(f) perform such other functions as are prescribed by the regulations or by the Governor in Council. R.S., c. 92, s. 4.

### **Public Inquiries Act**

**5** For the purpose of exercising the Registrar's functions under this Act, the Registrar has all the powers, privileges and immunities of a commissioner appointed under the *Public Inquiries Act*. R.S., c. 92, s. 5.

### **Powers**

**6** The Registrar or a person authorized by the Registrar for the purpose may enter the premises of a lender or any person who the Registrar has reasonable grounds to believe is carrying on the business of a lender and inspect the records and files of the lender or person and make copies of or take extracts from any books, records or documents on those files. R.S., c. 92, s. 6.

### **Staff**

**7** To assist the Registrar in performing the Registrar's functions there must be appointed in accordance with the *Civil Service Act* such auditors, accountants, inspectors, clerks and other persons as are necessary. R.S., c. 92, s. 7.

### **Professionals**

**8** With the approval of the Governor in Council the Registrar may engage solicitors, accountants, actuaries and other professionally or technically qualified persons. R.S., c. 92, s. 8.

### **Advisory councils**

**9 (1)** The Governor in Council may appoint advisory councils to assist and advise the Registrar in the performance of the Registrar's functions.

**(2)** Separate advisory councils may be appointed to assist and advise respecting transactions relating to different types of money lending and credit granting.

**(3)** A provincial advisory council may be appointed from among the members of separate advisory councils to assist in coordinating the recommendations of separate councils.

**(4)** Each advisory council consists of such number of persons as the Governor in Council determines. R.S., c. 92, s. 9.

### **Discrimination prohibited**

**10 (1)** In this Section,  
"borrower" means a natural person who receives credit;  
"buyer" means a natural person who purchases goods or services;  
"credit" means credit for which a borrower is required to pay and that is

(a) given under an agreement between a seller and a buyer to purchase goods or services by which all or part of the purchase price is payable after the agreement is entered into; or

(b) given by advancement of money;

“goods” includes tokens, coupons or other documents or things issued or sold by a seller to a buyer that are exchangeable or redeemable for goods or services;

“lender” means a person who as a business or in the course of business extends credit and includes the person’s agent;

“seller” means a person who is in the business of selling goods or services to buyers and includes the person’s agent.

(2) No lender or seller shall refuse to lend or sell to a borrower or buyer, or discriminate against a borrower or buyer, because of the sex or marital status of the borrower or buyer. R.S., c. 92, s. 10; 2018, c. 43, s. 5.

#### **Permit**

11 (1) No person shall carry on business as a lender unless that person holds a valid permit under this Act.

(2) No person shall publish or cause to be published any statement or representation that the person holds a permit under this Act. R.S., c. 92, s. 11; 1999, c. 4, s. 4.

#### **Duty to issue a permit**

12 (1) Upon receipt of an application in the form approved by the Registrar from an applicant who satisfies the requirements of the regulations the Registrar shall issue a permit.

(2) Unless previously terminated or cancelled, every permit issued pursuant to subsection (1) expires three years from the date of its issue or such other period as may be prescribed by the regulations.

(3) The Registrar shall not refuse to issue a permit to a lender or cancel the permit of a lender without giving the lender an opportunity to be heard. R.S., c. 92, s. 12; 1999, c. 4, s. 5; 2018, c. 43, s. 6.

#### **Terms and conditions and repayment of charges**

13 The Registrar may

(a) set terms and conditions for the issuance of a new permit, the maintaining of an existing permit, the reinstatement of a suspended permit or for an applicant who had their permit previously cancelled; and

(b) require the repayment by a lender of any charges made to which the lender was not entitled. 2006, c. 25, s. 1.

#### **Further information and material**

14 The Registrar may require at any time any further information or material to be submitted within a specified time by any applicant or any person

issued a permit pursuant to this Act and may require, where the Registrar considers advisable, verification by affidavit or otherwise of any information or material then or previously submitted. 2017, c. 9, s. 3.

#### **Suspension or cancellation**

**15** The Registrar may suspend or cancel the permit of any person

(a) for the breach of a term or condition upon which the permit was granted;

(b) where the Registrar has reason to believe that the person has violated or failed to comply with any provision of this Act or the regulations or an order or direction given under this Act or the regulations; or

(c) where the Registrar considers it to be in the public interest to do so. R.S., c. 92, s. 13; 1999, c. 4, s. 6.

#### **Procedure for cancellation**

**16 (1)** Where the Registrar believes that a lender who holds a permit under this Act is not carrying on business in the Province, the Registrar may send to the lender a registered letter inquiring whether the lender is carrying on business in the Province and stating that if an answer to the letter is not received within one month from the date of the letter the lender's permit will be cancelled and notice of cancellation will be published in the Royal Gazette.

(2) Where the Registrar either receives an answer from the lender to the effect that the lender is not carrying on business as a lender or does not within one month after sending the letter receive an answer to it, the Registrar may cancel the permit of the lender and publish notice of the cancellation in the Royal Gazette.

(3) The Registrar may cancel the permit of a lender when the Registrar is satisfied that the lender has died.

(4) The Registrar may cancel the permit of any lender that is a company if the Registrar is satisfied that the company has been dissolved or has been struck off the register under the *Corporations Registration Act*.

(5) The Registrar may cancel the permit of any lender who has become bankrupt. R.S., c. 92, s. 14; 1999, c. 4, s. 7.

#### **Address for service**

**17 (1)** Every applicant for a permit shall state in the application an address for service in the Province and all notices under this Act or the regulations required or permitted to be given to the applicant are sufficiently given or served for all purposes if delivered or sent by registered mail to the latest address for service so stated.

(2) Every lender who holds a permit under this Act shall within five days notify the Registrar in writing of

(a) any change in the lender's address for service; and

(b) any change in the membership in the case of a partnership. R.S., c. 92, s. 15; 1999, c. 4, s. 8.

**Misleading statements**

**18** Where any person who holds a permit under this Act is making false, misleading or deceptive statements relating to the extension of credit in any advertisement, circular, pamphlet or similar material, the Registrar may order the immediate cessation of the use of such material. R.S., c. 92, s. 16; 2017, c. 9, s. 4.

**Statement for borrower**

**19 (1)** Except as provided in subsection (3), every lender shall furnish to the borrower before extending the credit a clear statement in writing showing

- (a) the sum expressed as one sum in dollars and cents, of
  - (i) in the case of credit given by the advancement of money, the sum actually received in cash by the borrower and by any person on the borrower's behalf, or
  - (ii) in the case of a sale of goods or services, the cash price of the goods or services;
- (b) where the lender is a seller, the sums, if any, to be credited as a down payment or in respect of a trade-in or in respect of any other matter;
- (c) where the lender is a seller, the sum that is the difference between the sum stated under subclause (a)(ii) and the sums stated under clause (b);
- (d) the sum remaining unpaid under a previous extension of credit, in an amount determined under Section 46, that the borrower and lender agree is to be consolidated with the extension of credit of which the statement is given;
- (e) the sum of official fees and premiums for insurance paid or payable by the lender at the request of the borrower;
- (f) the aggregate
  - (i) where the lender is a seller, of the sums stated under clauses (c), (d) and (e), or
  - (ii) where the lender is not a seller, of the sums stated under subclause (a)(i) and under clauses (d) and (e);
- (g) the cost of borrowing expressed as one sum in dollars and cents;
- (h) the percentage that the cost of borrowing bears to the sum stated
  - (i) where the lender is a seller, under subclause (f)(i), and
  - (ii) where the lender is not a seller, under subclause (f)(ii),

expressed as an annual rate on the unpaid balance of the obligation from time to time, which percentage must be calculated and expressed in the manner prescribed in the regulations; and

- (i) the basis upon which additional charges are to be made in the event of default.
- (2) In addition to the statement required by subsection (1), where a lender and borrower agree that the rate of interest is subject to variation, the lender shall within 30 days of any change in the rate of interest send to the borrower such statement in writing in such form and containing such information as is prescribed by the regulations.
- (3) A lender extending variable credit shall
  - (a) before extending variable credit, furnish the borrower with a clear statement in writing setting forth the cost of borrowing
    - (i) as an annual percentage or a scale of annual percentages, calculated and expressed in the manner prescribed by the regulations, that the borrower is required to pay monthly or periodically on the unpaid balance, subject to a minimum dollars and cents charge, if any, and
    - (ii) expressed in dollars and cents in a schedule of amounts of outstanding balances and the corresponding charges for the cost of borrowing;
  - (b) not less frequently than every five weeks during the extension of credit, furnish the borrower with a clear statement in writing showing in respect of the period covered by the statement
    - (i) the outstanding balance in the account of the borrower at the beginning of the period,
    - (ii) the amount of each extension of credit to the borrower during the period and the date thereof,
    - (iii) the total sum received from or credited to the account of the borrower during the period,
    - (iv) the cost of borrowing, expressed as one sum in dollars and cents, charged during the period,
    - (v) the outstanding balance in the account of the borrower at the end of the period, and
    - (vi) the statement referred to in clause (a).
- (4) Where anything required to be disclosed pursuant to subsection (3) is varied, the lender shall at least 30 days before the variation is effective send to the borrower a notice of the variation.
- (5) The statement required to be furnished under subsection (1) or clause (3)(a) may be contained in the principal document or instrument relating to the credit transaction or in a separate document.
- (6) Notwithstanding any other provision of this Section, where credit is extended and no time or date for payment or repayment is specified at the time the credit is extended the cost of borrowing may be disclosed as a statement of the percentage rate for one year on the credit extended and as the amount in dollars and cents that would be payable by the person to whom the credit was extended if

payment or repayment was required to be made one year after the credit was extended. R.S., c. 92, s. 17; 1998, c. 8, s. 23.

#### Maximum rate

**20 (1)** A borrower is not liable to pay a lender as the cost of borrowing any sum or at a rate that exceeds the sum or rate disclosed in a statement given pursuant to Section 19 by more than the tolerances, if any, permitted by the regulations.

**(2)** Nothing in this Act has the effect of depriving a lender of or interfering with the right of a lender to collect from a borrower

(a) the principal of a debt, loan or credit; or

(b) the cost of borrowing thereon at the lesser of the sum or rate shown in a statement required by Section 19. R.S., c. 92, s. 18.

#### Interpretation of Sections 21 to 45

**21** In this Section and Sections 22 to 45,

“financial services provider” means a bank or another organization that provides remote fund transfers, electronic fund transfers or any similar method of transferring money;

“Internet payday loan” means a payday loan under an agreement between a borrower and a lender that is formed by Internet communications or by a combination of Internet and facsimile communications;

“payday lender” means a person who offers, arranges or provides a payday loan;

“payday loan” means any advancement of money with a principal of \$1,500 or less and a term of 62 days or less made in exchange for a post-dated cheque, a pre-authorized debit or a future payment of a similar nature but not for any guarantee, suretyship, overdraft protection or security on property and not through a margin loan, pawnbroking, a line of credit or a credit card;

“rollover” means the extension or renewal of a loan that imposes additional fees or charges on the borrower, other than interest, or the advancement of a new payday loan to pay out an existing payday loan, or a transaction specified in the regulations. 2006, c. 25, s. 2; 2011, c. 55, s. 1; 2017, c. 9, s. 5.

#### Application of Sections 21 to 45

**22** Nothing in Sections 21 to 45 applies to a payday loan made before August 1, 2009, except to the extent that it relates to an extension or renewal made or granted on or after that day. 2006, c. 25, s. 2.

#### Requirement for payday loan permit

**23 (1)** No person shall offer, arrange or provide a payday loan from a location except under the authority of a permit issued to the person for that location.

(2) No person shall offer, arrange or provide an Internet payday loan from a website to a borrower in the Province except under the authority of a permit

- (a) issued to the person for a location; and
- (b) that specifies that the person may offer, arrange or provide Internet payday loans from that website.

(3) No payday lender shall offer, arrange or provide a payday loan under the business name or style that differs from the business name or style specified in the lender's permit. 2006, c. 25, s. 2; 2011, c. 55, s. 2.

#### **Application for permit**

**24 (1)** A person may apply, in the form approved by the Registrar, for

(a) a permit authorizing the person to offer, arrange or provide payday loans; or

(b) a renewal of a permit.

(2) An application for a permit must specify

(a) the location from which the applicant wishes to offer, arrange or provide payday loans; and

(b) the website, if any, from which the applicant wishes to offer, arrange or provide Internet payday loans.

(3) A person who wishes to offer, arrange or provide payday loans at more than one location must apply for a separate permit for each location.

(4) Before a permit is issued or renewed by the Registrar, the applicant must pay the permit or renewal fee specified in the regulations.

(5) Where the effective period of the permit is less than one year, the permit fee referred to in subsection (4) must be pro-rated in relation to the effective period of the permit. 2006, c. 25, s. 2; 2011, c. 55, s. 3.

#### **Issue of permit**

**25 (1)** Upon receipt of an application in the prescribed form from an applicant who satisfies the requirements of this Act and the regulations and any terms or conditions stipulated by the Registrar, the Registrar shall issue a permit to the applicant.

(2) Unless previously terminated or cancelled, every permit issued pursuant to subsection (1) expires on July 31st in each year or such other date as may be prescribed in the regulations. 2006, c. 25, s. 2; 2011, c. 55, s. 4; 2018, c. 43, s. 7.

#### **Not transferable or assignable**

**26 (1)** A permit issued pursuant to Section 25 is not transferable or assignable.

(2) In the event of a change in ownership of a payday lender, the person acquiring ownership of the payday lender must apply for a new permit.

(3) The Registrar may, where the Registrar considers it in the public interest to do so, impose terms or conditions on a permit at the time of issuing or renewing the permit, or at any other time by written notice to the permit holder. 2006, c. 25, s. 2.

#### Refusal to issue permit

- 27 (1) The Registrar may refuse to issue a permit to an applicant if
- (a) the applicant has been convicted of
    - (i) an offence under this Act, or
    - (ii) an offence under the *Criminal Code* (Canada) or any other Act that, in the opinion of the Registrar, involves a dishonest action or intent;
  - (b) the applicant is an undischarged bankrupt;
  - (c) the applicant provides incomplete, false, misleading or inaccurate information in support of the application;
  - (d) a permit issued to the applicant
    - (i) under this Act, or
    - (ii) by an authority responsible for issuing permits with respect to the lending of money in any jurisdiction, is suspended or has been cancelled, or the applicant has applied for a renewal of such a permit and the renewal has been refused;
  - (e) the applicant fails to meet any qualification or satisfy any requirement of Sections 21 to 45 or the regulations;
  - (f) the Registrar has reason to believe that the applicant will not carry on business according to law and with integrity and honesty; or
  - (g) in the Registrar's opinion, it is not in the public interest to issue a permit to the applicant.

(2) The Registrar shall refuse to issue a permit to an applicant if the application fails to specify a location from which the applicant will offer, arrange or provide payday loans.

- (3) The Registrar may refuse to issue a permit to
- (a) a corporation, if a director or officer of the corporation could be refused a permit under subsection (1); or
  - (b) a partnership, if a member of the partnership could be refused a permit under subsection (1).

(4) The Registrar shall give written reasons for a decision to refuse to issue a permit. 2006, c. 25, s. 2; 2011, c. 55, s. 5.

#### Refusal of renewal, cancellation and suspension

28 (1) Subject to subsection (3), the Registrar may refuse to renew or may cancel or suspend a payday lender's permit

- (a) for any reason for which the Registrar may refuse to issue a permit under Section 27;
  - (b) if the lender fails to provide information required by the Registrar or the regulations, or provides incomplete, false, misleading or inaccurate information to the Registrar;
  - (c) if the lender contravenes or fails to comply with this Act or the regulations; or
  - (d) if the lender contravenes or fails to comply with a condition of the permit.
- (2) Subject to subsection (3), the Registrar shall refuse to renew or shall cancel or suspend a payday lender's permit if the payday lender
- (a) fails or ceases to offer, arrange or provide payday loans, other than Internet payday loans, from the location specified in the permit; and
  - (b) offers, arranges or provides an Internet payday loan to a borrower in the Province.
- (3) Before refusing to renew or cancelling or suspending a permit, the Registrar shall notify the payday lender, in writing, that
- (a) the Registrar intends to refuse to renew the permit or to cancel or suspend it, the effective date of the Registrar's decision and why; and
  - (b) the lender may, within 14 days after being served with the notice,
    - (i) make a written submission to the Registrar as to why the renewal should not be refused or the permit should not be cancelled or suspended, or
    - (ii) contact the Registrar to request a hearing before the Registrar.
- (4) The Registrar may extend the 14-day period referred to in clause (3)(b).
- (5) Where the payday lender does not make a written submission or arrange for and attend a hearing under clause (3)(b), the Registrar may take the action stated in the notice.
- (6) After considering a written submission or holding a hearing, the Registrar may refuse to renew the permit or may cancel or suspend the permit.
- (7) A decision to cancel or suspend a payday lender's permit made pursuant to subsection (6) takes effect when notice of the decision is served on the lender, or on the date specified in the decision, whichever is later.
- (8) The Registrar shall give written reasons for a decision to refuse to renew or to cancel or suspend a permit. 2006, c. 25, s. 2; 2011, c. 55, s. 6.

**Requirements for Internet payday loan website**

**29 (1)** No payday lender shall offer, arrange or provide an Internet payday loan to a prospective borrower in the Province unless the payday lender's website is designed and maintained in a manner that

- (a) allows the prospective borrower to readily understand what action or actions will result in the prospective borrower's acceptance of the loan agreement;
- (b) makes the agreement accessible to the prospective borrower in a manner that allows the prospective borrower to acknowledge and accept the terms and conditions of the loan agreement; and
- (c) allows the prospective borrower to print the loan agreement.

**(2)** A payday lender shall ensure that the payday lender's website is designed and maintained in a manner that allows a borrower to, for the term of the borrower's Internet payday loan, print a copy of the loan agreement. 2011, c. 55, s. 7.

**Consent and record for Internet payday loan**

**30 (1)** Before providing the money being advanced under an Internet payday loan, a payday lender shall

- (a) ensure that the borrower has consented to entering into the loan agreement; and
- (b) create a record evidencing the borrower's consent.

**(2)** A record created pursuant to clause (1)(b) is deemed to be part of the loan agreement for the purpose of this Act and must be retained for the period of time prescribed by the regulations. 2011, c. 55, s. 7.

**Timing of Internet payday loan**

**31** A payday lender shall instruct its financial services provider on the same day on which the payday lender enters into the loan agreement to transfer the money being advanced under an Internet payday loan to the borrower. 2017, c. 9, s. 6.

**Manner of providing payday loan money**

**32 (1)** A payday lender shall

- (a) offer to provide the money being advanced to the borrower under a payday loan in cash; and
- (b) provide the money being advanced in cash if the borrower so elects.

**(2)** Subsection (1) does not apply in respect of money being advanced by a payday lender under an Internet payday loan. 2011, c. 55, s. 7.

**Provision of information by payday lender**

**33** A payday lender shall provide, in writing and in plain language, the following information to a borrower:

- (a) the total amount borrowed expressed as one sum in dollars and cents, that is composed of
  - (i) the sum actually received by the borrower, and
  - (ii) the sum of official fees and premiums for insurance paid by the borrower;
- (b) the cost of borrowing expressed in dollars and cents and itemized into interest and any other charges;
- (c) the interest payable as a percentage rate;
- (d) the cost of borrowing as a percentage of the total amount borrowed expressed at an annual rate;
- (e) the total amount to be repaid;
- (f) the regulated maximum rates or fees for the cost of borrowing or any other charges applying to payday loans as determined by the Nova Scotia Utility and Review Board;
- (g) charges payable in the event the loan is not repaid by the due date and the allowable maximum charges as determined by the Nova Scotia Utility and Review Board;
- (h) how a loan may be cancelled;
- (i) the borrower's rights if the lender charges amounts prohibited under Section 34;
- (j) the amount of fees and charges that can be applied to any extension or renewal as determined by the Nova Scotia Utility and Review Board;
- (k) a copy of the loan agreement;
- (l) a copy of a document signed by the borrower stating that the borrower has received the information set out in this Section;
- (m) any educational materials prepared or approved by the Registrar; and
- (n) such other information as prescribed in the regulations. 2006, c. 25, s. 2; 2017, c. 9, s. 7.

**Restriction on charges**

**34** A payday lender shall not charge

- (a) any fee, rate or other charge in excess of the maximum fees, rates or charges determined by the Nova Scotia Utility and Review Board;
- (b) any fee, charge or penalty that is not provided for in this Act or the regulations;
- (c) any amount in excess of that disclosed in writing to the borrower;
- (d) any fee or charge for providing in cash the money being advanced under a payday loan;
- (e) a fee for cancellation of a payday loan; and

(f) any amount not disclosed in writing to the borrower. 2006, c. 25, s. 2; 2011, c. 55, s. 8.

#### **Extension or renewal**

**35** Where a payday loan is not fully repaid on the due date set out in the payday loan, the borrower and the lender may negotiate an extension or renewal of the payday loan. 2006, c. 25, s. 2.

#### **Collection**

**36** Any procedures used by a payday lender to collect money due under a payday loan are subject to this Act and the *Consumer Creditors Conduct Act*. 2006, c. 25, s. 2.

#### **Receipts**

**37** A payday lender shall issue receipts for the repayment of a payday loan and must retain such receipts in the manner prescribed in the regulations. 2006, c. 25, s. 2.

#### **Prohibitions**

**38** A payday lender shall not

- (a) require security for a payday loan;
- (b) require undated cheques or require postdated cheques for any amount exceeding the amount to repay the payday loan by the due date including interest and fees;
- (c) issue a new payday loan to a borrower who already has a loan with the lender;
- (d) discount the principal amount of the loan by deducting or withholding from the initial advance an amount representing any portion of the cost of borrowing;
- (e) issue a loan in excess of a portion of the borrower's net pay as prescribed;
- (f) where a loan agreement makes provision for instalment payments, require an instalment payment to be in excess of a portion of the borrower's net pay as prescribed;
- (g) charge a penalty or fee for the early repayment of a loan; or
- (h) grant rollovers. 2006, c. 25, s. 2.

#### **Display of rates, fees and prescribed information**

**39** (1) A payday lender shall display, in the manner prescribed by the regulations,

- (a) rates and fees for payday loans; and
  - (b) any other information prescribed by the regulations,
- at the location from which the payday lender offers, arranges or provides payday loans.

(2) A payday lender shall display, in the manner prescribed by the regulations,

- (a) rates and fees for Internet payday loans; and
- (b) any other information prescribed by the regulations,

on the website from which the payday lender offers, arranges or provides Internet payday loans.

(3) A payday lender shall display, in the manner and format required by the Registrar, any educational materials prepared or approved by the Registrar at the location from which the payday lender offers, arranges or provides payday loans.

(4) A payday lender shall display, in the manner and format required by the Registrar, any educational materials prepared or approved by the Registrar on the website from which the payday lender offers, arranges or provides Internet payday loans. 2011, c. 55, s. 9; 2017, c. 9, s. 8.

#### **Borrower not liable**

**40** (1) The borrower is not liable to pay the payday lender any amount the payday lender is prohibited from charging under Section 34.

(2) Where the borrower has paid an amount referred to in subsection (1), the borrower is entitled to a refund of all money paid in excess of the total amount borrowed.

(3) In the event that the loan agreement requires the borrower to pay an amount referred to in subsection (1), the borrower is responsible to repay only the total amount borrowed.

(4) Where the borrower is entitled to a refund under subsection (2), the payday lender shall provide the refund immediately upon demand by the borrower or by the Registrar.

(5) Where a payday lender provides a payday loan to a borrower without a permit to do so, the borrower is not liable to pay any amount to the payday lender in excess of the principal amount of the loan. 2006, c. 25, s. 2; 2011, c. 55, s. 10.

#### **Cancellation by borrower**

**41** (1) A borrower may cancel a payday loan anytime prior to the end of the business day following the date of receipt of the initial advance or cash card or other device enabling the borrower to access the funds, or such longer period as prescribed in the regulations.

(2) Notwithstanding subsection (1), a borrower may cancel an Internet payday loan within 48 hours following the receipt of the advance.

(3) A borrower may cancel a payday loan at any time if the payday lender

- (a) did not advise the borrower of the borrower's right under subsection (1) or (2), as the case may be; or

(b) failed to provide the borrower with the information required to be provided to the borrower under Section 33. 2006, c. 25, s. 2; 2011, c. 55, s. 11.

#### **Manner of cancellation**

**42 (1)** A borrower shall cancel a payday loan by

(a) giving written notice of the cancellation to the payday lender; and

(b) repaying, by cash, certified cheque or money order or in another prescribed manner, the outstanding balance of the total amount borrowed.

**(2)** For the purpose of clause (1)(b),

(a) where the initial advance was made in the form of a cheque, a return of the unnegotiated cheque to the payday lender is to be considered a repayment of the initial advance; and

(b) where the initial advance was made in the form of a cash card or other device that enabled the borrower to access funds under the loan, returning that card or device to the payday lender is to be considered a repayment of the initial advance to the extent of the cash or credit balance remaining on the card or device.

**(3)** Upon the cancellation of a payday loan under this Section, the payday lender must immediately give the borrower a receipt for what the borrower paid or returned to the payday lender upon cancelling the loan.

**(4)** The cancellation of a payday loan under this Section extinguishes every liability and obligation of the borrower under, or related to, the payday loan agreement.

**(5)** Notwithstanding subsection (4), in the event that the borrower purchased loan insurance paid by the lender at the request of the borrower, the borrower is responsible for the prorated amount of the insurance premium. 2006, c. 25, s. 2.

#### **Retention of documents**

**43** A payday lender shall retain the documents prescribed in the regulations for the period of time and in the manner and location prescribed in the regulations. 2006, c. 25, s. 2; 2011, c. 55, s. 12.

#### **Nova Scotia Utility and Review Board**

**44 (1)** In this Section, “Board” means the Nova Scotia Utility and Review Board.

**(2)** The Board shall, by order,

(a) fix the maximum cost of borrowing, or establish a rate, formula or tariff for determining the maximum cost of borrowing, that may be charged, required or accepted in respect of a payday loan;

(b) fix the maximum amount, or establish a rate, formula or tariff for determining the maximum amount, that may be charged, required or accepted in respect of the extension or renewal of a payday loan; and

(c) fix the maximum amount, or establish a rate, formula or tariff for determining the maximum amount, that may be charged, required or accepted in respect of any fee, charge or penalty that is provided for in the regulations.

(3) The Board may, by order, fix the maximum amount, or establish a rate, formula or tariff for determining the maximum amount, that may be charged, required or accepted in respect of any component of the cost of borrowing of a payday loan.

(4) When making an order under this Section, the Board may consider

(a) the operating expenses and revenue requirements of payday lenders in relation to their payday lending business;

(b) the terms and conditions of payday loans;

(c) the circumstances of, and credit options available to, payday loan borrowers generally, and the financial risks taken by payday lenders;

(d) the regulation of payday lenders and payday loans in other jurisdictions;

(e) any other factor that the Board considers relevant and in the public interest; and

(f) any data that the Board considers relevant.

(5) An order made under this Section must be one that the Board considers just and reasonable in the circumstances, having regard to the factors and data considered by the Board.

(6) The Board shall review its existing orders under this Section at least once every three years and, after the review, the Board shall make a new order that replaces the existing orders.

(7) Whenever the Board is satisfied that circumstances in the payday lending industry have changed substantially, or that new evidence has come to its attention that may affect an existing order made under subsection (2) or (3), the Board may review any existing order and, after the review, the Board shall make a new order that continues, modifies or replaces the order that was reviewed.

(8) Before making an order under this Section, the Board shall notify the Registrar and give public notice and hold a public hearing in respect of the subject matter of the order.

(9) As soon as practicable after the Board makes an order under this Section, the Registrar shall give written notice of the order to every payday lender who holds a permit or whose application for a permit is under consideration by the Registrar.

(10) The Board may make recommendations to the Minister on matters in respect of payday loans and payday lenders.

(11) The *Utility and Review Board Act* applies with necessary changes to a proceeding by the Board under this Section. 2006, c. 25, s. 2.

### Regulations

- 45 (1) The Governor in Council may make regulations
- (a) respecting application procedures for a permit;
  - (b) respecting payday lender permit fees;
  - (c) respecting the authority of the Registrar under Sections 21 to 45;
  - (d) respecting terms and conditions of a permit;
  - (e) prescribing when a permit expires;
  - (f) respecting forms;
  - (g) respecting procedures for appeals;
  - (h) requiring applicants and payday lenders to provide the information prescribed by the regulations to the Registrar, within the time and in the manner prescribed by the regulations;
  - (i) prescribing information that applicants and payday lenders are required to provide to the Registrar;
  - (j) prescribing the time and manner for providing to the Registrar the information prescribed pursuant to clause (i);
  - (k) respecting Internet payday loans, including regulations respecting standards and requirements for a website from which a payday lender offers, arranges or provides Internet payday loans;
  - (l) respecting the maximum portion of the borrower's net pay to be loaned by a payday lender;
  - (m) respecting the minimum term of a payday loan;
  - (n) respecting the maximum portion of the borrower's net pay allowed to be charged if the loan agreement makes provision for instalment payments;
  - (o) respecting the types of fees, charges, rates and penalties allowed to be charged with respect to a payday loan;
  - (p) respecting the display of fees, charges, rates, products offered and any other information prescribed by the regulations;
  - (q) prescribing information that a payday lender must display
    - (i) at a location, or
    - (ii) on a website,
 from which the payday lender offers, arranges or provides payday loans or Internet payday loans, as the case may be;

- (r) prohibiting certain practices with respect to payday loans;
- (s) respecting information to be disclosed to borrowers;
- (t) respecting payday loan renewal and extension practices;
- (u) respecting the cancellation of a payday loan;
- (v) respecting records to be maintained;
- (w) respecting the manner in which and the location where records are to be maintained;
- (x) respecting other types of payday loans;
- (y) respecting advertising in relation to payday loans;
- (z) respecting emerging business practices;
- (aa) defining any word or expression used but not defined in Sections 21 to 45;
- (ab) considered necessary or advisable by the Governor in Council to carry out effectively the intent and purpose of Sections 21 to 45.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*, 2006, c. 25, s. 2; 2011, c. 55, s. 13; 2018, c. 43, s. 8.

#### **Rights on early payment**

**46** Where a sum remaining to be paid under an agreement for credit is paid in full before the term of the agreement has expired

- (a) the borrower is entitled to a rebate in respect of the cost of borrowing; and
- (b) the lender is entitled to a part of the cost of borrowing,

in an amount determined in the manner prescribed by the regulations. R.S., c. 92, s. 19.

#### **Advertising requirements**

**47 (1)** No lender shall publish or cause to be published whether in print or by radio or television broadcast or otherwise, any representation of a charge for credit that does not disclose the full cost of borrowing, stated as an annual percentage rate, expressed in the manner required by Section 19.

(2) Unless permitted by the regulations, where a lender represents or causes to be represented in a printing, broadcast or other publication any terms of a credit transaction other than a charge for credit, the lender shall also include or cause to be included all other relevant terms of the credit transaction, including

- (a) the sum to be actually received in cash by the borrower or the actual cash price of the goods;
- (b) the amount of the down payment, if any;
- (c) the amount of each instalment; and

(d) the number of instalments required to repay the total indebtedness including the cost of borrowing.

(3) No lender shall represent the lender's charge for credit or cause such charge to be represented unless the representation includes the full cost of borrowing and is expressed in the manner required by Section 19.

(4) Notwithstanding subsections (1) to (3), where advertising restrictions are set out in the regulations for some or all types of credit,

(a) a lender shall comply with the advertising restrictions prescribed in the regulations; and

(b) a lender is not obligated to comply with subsections (1) to (3) to the extent authorized by the regulations. R.S., c. 92, s. 20; 2018, c. 43, s. 9.

#### **Contracting out**

48 This Act applies notwithstanding any agreement or waiver to the contrary. R.S., c. 92, s. 21.

#### **Interpretation of Sections 49 to 59**

49 In this Section and Sections 50 to 59,

“consumer” means an individual who receives or has the right to receive goods or services from a supplier as a result of a purchase, lease or other arrangement;

“consumer transaction” means the supply of goods or services by a supplier to a consumer as a result of a purchase, lease or other arrangement;

“internet” means the decentralized global network connecting networks of computers and similar devices to each other for the electronic exchange of information using standardized communication protocols;

“internet sales contract” means a consumer transaction formed by text-based internet communications;

“services” means any services offered or provided primarily for personal, family or household purposes;

“supplier” means a person who, in the course of the person's business, provides goods or services to consumers. 2001, c. 40, s. 1.

#### **Application of Sections 51 to 59**

50 Sections 51 to 59 do not apply to

(a) goods and services that are immediately downloaded or accessed using the internet; or

(b) classes of goods and services that are excluded under the regulations. 2001, c. 40, s. 1.

#### **Disclosure of information respecting internet sales contract**

51 Before entering into an internet sales contract with a consumer, a supplier shall disclose the information prescribed by the regulations. 2001, c. 40, s. 1.

**Express opportunity to accept or decline internet sales contract**

**52** A supplier shall provide the consumer with an express opportunity to accept or decline the internet sales contract and to correct errors immediately before entering into it. 2001, c. 40, s. 1.

**Copy of internet sales contract**

**53 (1)** A supplier shall provide a consumer who enters into an internet sales contract with a copy of the contract in writing or electronic form within 15 days after the contract is entered into.

**(2)** A copy of the internet sales contract must include the requirements prescribed by the regulations.

**(3)** For the purpose of subsection (1), a supplier is considered to have provided a consumer with a copy of the internet sales contract if the copy is sent or otherwise provided in accordance with the regulations. 2001, c. 40, s. 1.

**Cancellation of internet sales contract**

**54** A consumer may cancel an internet sales contract under the circumstances described in the regulations. 2001, c. 40, s. 1.

**Effect of cancellation under Section 54**

**55 (1)** A cancellation of an internet sales contract under Section 54 operates to cancel the contract as if the contract had never existed.

**(2)** A cancellation of an internet sales contract under Section 54 also operates to cancel

- (a)** any related consumer transaction;
- (b)** any guarantee given in respect of consideration payable under the contract; and
- (c)** any security given by a consumer or a guarantor in respect of consideration payable under the contract,

as if the contract had never existed.

**(3)** Where credit is extended or arranged by the supplier, the credit contract is conditional on the internet sales contract whether or not the credit contract is a part of or attached to the internet sales contract and, where the internet sales contract is cancelled, that cancellation has the effect of cancelling the credit contract as if the internet sales contract had never existed. 2001, c. 40, s. 1.

**Duty of supplier upon cancellation under Section 54**

**56 (1)** Where an internet sales contract is cancelled under Section 54, a supplier shall, within 15 days from the date of cancellation, refund to a consumer all consideration paid by the consumer under the contract and any related consumer transaction, whether paid to the supplier or another person.

**(2)** Where goods are delivered to a consumer under an internet sales contract that is cancelled under Section 54, the consumer shall, within 15 days from the date of cancellation or delivery of the goods, whichever is later, return the

goods to the supplier unused and in the same condition in which they were delivered.

(3) A consumer may return the goods under subsection (2) by any method that provides the consumer with confirmation of delivery to the supplier.

(4) The supplier shall accept a return of goods by a consumer under subsection (2).

(5) The supplier is responsible for the reasonable cost of returning goods under subsection (2).

(6) Goods that are returned by the consumer under subsection (2) otherwise than by personal delivery are deemed for the purpose of that subsection to have been returned when sent by the consumer to the supplier.

(7) Any breach of the consumer's obligations under this Section is actionable by the supplier as a breach of statutory duty. 2001, c. 40, s. 1.

#### **Application by supplier for relief from Section 54**

57 A supplier may make an application to the Supreme Court of Nova Scotia claiming that it would be inequitable for an internet sales contract to be cancelled under Section 54 and the Court may, upon the application, make any order it considers appropriate. 2001, c. 40, s. 1.

#### **Recovery of consideration where cancellation under Section 54**

58 Where a consumer has cancelled an internet sales contract under Section 54 and the supplier has not refunded all of the consideration within the 15-day period referred to in Section 56, the consumer may recover the consideration from the supplier as an action in debt. 2001, c. 40, s. 1.

#### **Reversal of credit card charge where cancellation under Section 54**

59 (1) A consumer who has charged to a credit card account all or any part of the consideration payable under an internet sales contract or related consumer transaction may request the credit card issuer to cancel or reverse the credit card charge and any associated interest or other charges if the consumer has cancelled the contract under Section 54 and the supplier has not refunded all of the consideration within the 15-day period referred to in Section 56.

- (2) A request under subsection (1) must
- (a) be in writing or electronic form;
  - (b) contain the requirements prescribed by the regulations;
- and
- (c) be made within any time period prescribed by the regulations.

(3) The credit card issuer may, upon receiving a request under subsection (1), require that the consumer verify the content of the request by affidavit or declaration.

- (4) The credit card issuer shall
- (a) acknowledge the consumer's request within 30 days of receiving it; and
  - (b) where the request satisfies subsections (2) and (3), cancel or reverse the credit card charge and any associated interest or other charges within two complete billing cycles of the credit card issuer or 90 days, whichever first occurs.

(5) A request under subsection (1) may be given to the credit card issuer by any means, including personal service, registered mail, courier, facsimile and electronic mail.

(6) Where the request is given other than by personal service, the request is deemed to be given when sent. 2001, c. 40, s. 1.

### **Rights preserved**

**60** The rights of a buyer or borrower under this Act are in addition to any rights of the buyer or borrower under any other Act or by the operation of law and nothing in this Act is to be construed to derogate from such rights. R.S., c. 92, s. 22.

### **Unsolicited goods**

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

“credit” means the advancing of money, goods or services to or on behalf of another for repayment at a later time, whether or not there is a cost of borrowing, and includes variable credit;

“unsolicited goods” means personal property furnished to a person who did not request it and a request must not be inferred from inaction or the passing of time alone, but, for greater certainty, does not include services and also does not include

(a) personal property that the recipient knows or ought to know is intended for another person; or

(b) personal property supplied under a contract in writing to which the recipient is a party that provides for the periodic supply of personal property to the recipient without further solicitation.

(2) No action may be brought by which to charge any person upon any arrangement for the extension of credit evidenced by a credit card unless the person to whom credit is to be extended requested or accepted the credit arrangement and card in writing.

(3) For the purpose of subsection (2), the obtaining of credit by the person named in the credit card is deemed to constitute written acceptance by that person.

(4) No action may be brought by which to charge any person for payment in respect of unsolicited goods notwithstanding their use, misuse, loss, damage or theft.

(5) Except as provided in this Section, the recipient of unsolicited goods or of a credit card that has not been requested or accepted in accordance with subsection (2) has no legal obligation in respect of their use or disposal.

(6) This Section applies in respect of credit cards and unsolicited goods received on or after April 8, 1971. R.S., c. 92, s. 23; 1994, c. 16, s. 1.

#### **Request for credit required**

**62** (1) No lender shall extend credit by way of an advancement of money unless the person to whom the credit is extended has previously applied for or requested it.

(2) No action may be brought against a person for repayment of credit extended contrary to subsection (1). R.S., c. 92, s. 24.

#### **Negative-option strategy**

**63** (1) For the purpose of this Section, a seller uses a negative-option strategy in delivering a service if the seller delivers a service to a buyer after having, on or after April 26, 1994, first notified the buyer to the effect that

- (a) the seller proposes to deliver the service; and
- (b) the service will be delivered and the buyer will be billed for the service unless the buyer, on or before the time specified in the notice or during a particular time period, instructs the seller not to deliver the service,

and the buyer neither instructs the seller not to supply the services nor authorizes or requests the seller to deliver the services.

(2) No seller shall use a negative-option strategy in the delivery of a service.

(3) Where a negative-option strategy is used in the delivery of a service, no action lies for the payment of any fee or purchase price for the service. 1994, c. 16, s. 2.

#### **Rights and obligations of assignee**

**64** Notwithstanding any other enactment or law but subject to this Act, the assignee of any rights of a lender in an extension of credit or any transaction to which this Act applies has no greater rights than, and is subject to the same obligations, liabilities and duties as, the assignor, and this Act applies equally to such an assignee, but the liability of the assignee is limited to the total amount owing to the lender at the date of assignment under the agreement governing the extension of credit or transaction. R.S., c. 92, s. 25.

#### **Interpretation of Sections 65 to 74**

**65** In this Section and Sections 66 to 74,

“customer” means a person who enters into, or is discussing with an operator the prospect of entering into, a contract;

“initiation fee” means a one-time fee in addition to the membership fee;

“membership fee” means the amount payable by a customer for the use of services;

“operator” means a person who provides or offers to provide services;

“payment” includes an initiation fee;

“services” means facilities provided for, or instruction on,

(a) health, fitness, modeling, tanning, diet or matters of a similar nature; or

(b) sports, dance or similar activities. 1998, c. 8, s. 24.

#### **Application of Sections 67 to 74**

**66 (1)** Sections 67 to 74 apply in respect of services or proposed services for which payment in advance is required.

**(2)** Sections 67 to 74 do not apply in respect of services that are provided

(a) on a non-profit or co-operative basis;

(b) by a private club primarily owned by its members;

(c) incidental to the main business of the operator where no fee is charged for the services;

(d) by an operator funded or run by a charitable or municipal organization or by the Province or any agency thereof;

(e) for an amount less than that prescribed by the regulations. 1998, c. 8, s. 24.

#### **Restriction on advance payment**

**67 (1)** No operator shall require or accept advance payment for services from a customer with whom the operator

(a) does not have a written contract that meets the conditions set out in Section 68; or

(b) has a contract where all of the services contracted for by the customer are not available to the customer at the beginning of the term of the contract with the customer.

**(2)** The term of a contract begins when all of the services contracted for are first made available to the customer.

**(3)** No contract may be made for a term longer than one year.

**(4)** All payments received in contravention of subsection (1) are repayable to the person making the payments on demand by that person. 1998, c. 8, s. 24.

#### **Required contents of contract**

**68 (1)** A contract must set out

(a) the name and address of the operator and the customer;

- (b) a description of the services contracted for by the customer that is sufficient to identify those services with certainty;
- (c) the price of the services contracted for;
- (d) the conditions upon which the contract may be renewed, cancelled or rescinded;
- (e) where payment is to be by instalment, the number of instalments, the amount of each instalment and the total additional cost, if any, for payment by instalment; and
- (f) where any part of the services are not available at the time the contract is signed, the date that the services will be made available and the name and address of the person holding the funds pending availability.

(2) A contract that provides for renewal must provide that it is not renewable if the customer notifies the operator in writing, before the time for renewal, that the customer does not want to renew. 1998, c. 8, s. 24.

#### **Limitation on fees**

**69** (1) No operator shall charge a customer more than one initiation fee.

(2) No operator shall charge an initiation fee that is greater than twice the membership fee. 1998, c. 8, s. 24.

#### **Requirement for instalment plan**

**70** (1) Every operator shall make available to every customer at least one plan for instalment payments of membership and, where applicable, initiation fees whereby the customer may make equal monthly payments over the term of the contract.

(2) In a plan for payments, the total amount paid by instalments may not exceed the membership or initiation fee, if applicable, by more than 25%. 1998, c. 8, s. 24.

#### **Rescission**

**71** (1) A customer may rescind a contract by delivering written notice of rescission to the operator within five days after the contract is signed or the services are available, whichever is the later.

(2) A notice of rescission sent to an operator by registered mail is deemed to be delivered on the day that it is mailed.

(3) A customer who rescinds a contract is not liable for payment for services received or used up to the rescission and is entitled to a refund of any payment pursuant to the contract. 1998, c. 8, s. 24.

#### **Time for payment of refund**

**72** Every operator who owes a refund shall pay the refund within 20 days

- (a) after receiving notice of rescission or cancellation, as the case may be; or
- (b) where Section 74 applies, after the day specified in the contract or the expiration of the last permission, whichever is the later. 1998, c. 8, s. 24.

#### **Non-application of renewal provision**

**73 (1)** Where a contract provides for renewal and the operator does not deliver to the customer a notice reminding the customer of the provision required by subsection 68(2), the provision for renewal does not apply.

**(2)** A notice pursuant to subsection (1) must be delivered at least 30 days before, but not more than 90 days before, the end of the contract.

**(3)** A notice pursuant to subsection (1) sent by registered mail to the customer at the last known address of the customer on file with the operator is deemed to be delivered on the day that it is mailed. 1998, c. 8, s. 24; 2017, c. 9, s. 9.

#### **Obligation to refund**

**74 (1)** Where a facility is not available for use on the day specified in the contract, the operator shall refund all payments received from the customer unless the customer agrees, in writing, to permit the operator to retain the payment.

**(2)** No permission given pursuant to subsection (1) applies for longer than 90 days but a subsequent permission may be given on the expiration of a permission. 1998, c. 8, s. 24.

#### **Implied conditions or warranties**

**75 (1)** In this Section and Section 76,

“consumer sale” means a contract of sale of goods or services, including an agreement of sale as well as a sale and a conditional sale of goods, made in the ordinary course of business to a purchaser for the purchaser’s consumption or use, but does not include a sale

- (a) to a purchaser for resale;
- (b) to a purchaser whose purchase is in the course of carrying on business;
- (c) to an association of individuals, a partnership or a corporation; or
- (d) by a trustee in bankruptcy, a receiver, a liquidator or a person acting under the order of a court;

“purchaser” means a person who buys or agrees to buy goods or services.

**(2)** Notwithstanding any agreement to the contrary, the following conditions or warranties on the part of the seller are implied in every consumer sale:

- (a) a condition that the seller has a right to sell the goods, and that, in the case of an agreement to sell, the seller will have a right to sell the goods at the time when the property is to pass;

(b) a warranty that the purchaser will have and enjoy quiet possession of the goods;

(c) a warranty that the goods are free from any charge or encumbrance in favour of any third party, not declared or known to the buyer before or at the time when the contract is made;

(d) where there is a contract for the sale of goods by description, there is a condition that the goods must correspond with the description and, where the sale be by sample as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description;

(e) where the purchaser, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the purchaser relies on the seller's skill or judgement and the goods are of a description that it is in the course of the seller's business to supply, whether the seller be the manufacturer or not, a condition that the goods must be reasonably fit for such purpose provided that, in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose;

(f) where goods are bought by description from a seller who deals in goods of that description, whether the seller be the manufacturer or not, a condition that the goods must be of merchantable quality, provided that, where the purchaser has examined the goods, there is no implied condition as regards defects that such examination ought to have revealed;

(g) in the case of a contract for sale by sample,

(i) a condition that the bulk must correspond with the sample in quality,

(ii) a condition that the purchaser have a reasonable opportunity of comparing the bulk with the sample, and

(iii) a condition that the goods must be free from any defect, rendering them unmerchantable, that would not be apparent on reasonable examination of the sample;

(h) a condition that the goods are of merchantable quality, except for such defects as are described;

(i) a condition that the goods, whether bought by description or otherwise, are new and unused unless otherwise described;

(j) a condition that the goods must be durable for a reasonable period of time having regard to the use to which they would normally be put and to all the surrounding circumstances of the sale.

**(3)** For the purpose of clause (h), it is not necessary to specify every defect separately, if the general condition or quality of the goods is stated with reasonable accuracy.

(4) There is implied in every consumer sale of services a condition, on the part of the seller, that the services sold must be performed in a skillful, efficient and competent manner. R.S., c. 92, s. 26; 2018, c. 43, s. 10.

#### **Sale not binding**

76 A consumer sale is not binding upon the purchaser where with respect thereto the seller gives, or offers to give, a rebate or discount to the purchaser in consideration of the purchaser giving to the seller the names of prospective purchasers, or otherwise aiding the seller in making a sale to another person, if the earning of the rebate, discount or other value is contingent upon the occurrence of an event subsequent to the time the purchaser agrees to buy. R.S., c. 92, s. 27.

#### **Void terms**

77 (1) Any written term or acknowledgement, whether part of a contract of sale or not, that purports to negative or vary any of the conditions or warranties set out in this Act or states that this Act or the regulations do not apply or that a benefit or remedy under this Act or the regulations is not available, or that in any way limits or abrogates, or in effect limits, modifies or abrogates a benefit or remedy under this Act or the regulations, or that in any way limits, modifies or abrogates any liability of the seller, including any limitation, modification or abrogation of damages for breach of any of the conditions or warranties set out in this Act or the regulations, is void.

(2) Where a written term or agreement contrary to this Act or the regulations is a term of the contract, it is severable therefrom.

(3) A written term or acknowledgement contrary to this Act or the regulations is not evidence of circumstances showing an intent that any of the implied conditions and warranties are not to apply.

(4) Money paid under or by reason of a written term or acknowledgement contrary to this Act or the regulations is recoverable in a court of law. R.S., c. 92, s. 28.

#### **Express warranties**

78 (1) For the purpose of this Section, a manufacturer, seller or lessor makes an express warranty respecting an automobile if the manufacturer, seller or lessor makes a statement respecting the automobile either

(a) as part of a written contract for the sale or lease of the automobile by the seller or lessor to a purchaser or lessee; or

(b) to the public or any part of the public, no matter in what manner the statement is made, including any advertisement.

(2) Where a manufacturer, seller or lessor makes an express warranty of the kind described in subclause (1)(b) respecting an automobile and subsequently sells or leases the automobile to a purchaser or lessee, the express warranty is deemed, for the purpose of this Section, to be part of the contract of sale or lease.

(3) Where an express warranty forms part of a contract of sale or lease of an automobile, each subsequent purchaser or lessee who acquires an ownership or leasehold interest in the automobile has the same rights and remedies under

the express warranty as if the subsequent purchaser or lessee were the original purchaser or lessee under the contract.

(4) No person shall charge or collect any fee for the transfer of a warranty by the operation of subsection (3). 1994, c. 16, s. 3.

#### **Offence and penalty**

79 (1) Every person who violates or fails to comply with any provision of this Act or the regulations or an order or direction given under this Act or the regulations and every director of a corporation who knowingly concurs in a violation or failure to comply with any provision of this Act or the regulations or an order or direction given under this Act or the regulations is guilty of an offence and liable on summary conviction to a penalty of not more than \$25,000 or to imprisonment for a term of not more than one year, or both.

(2) Where a corporation is convicted of an offence under subsection (1) it is liable to a penalty of not more than \$300,000. R.S., c. 92, s. 29; 2012, c. 19, s. 2.

#### **Limitation period**

80 A prosecution for an offence under this Act or the regulations may not be commenced more than three years after the later of

- (a) the date on which the offence was committed; and
- (b) the date on which evidence of the offence first came to the attention of the Registrar. 2018, c. 43, s. 11.

#### **Proof of statement**

81 A statement as to

- (a) whether a permit was issued or was not issued to a person under this Act;
- (b) the filing or non-filing of any document or material required or permitted to be filed with the Registrar;
- (c) the time when the facts upon which proceedings are based first came to the knowledge of the Registrar; or
- (d) any other matter pertaining to such issuance or non-issuance of a permit, filing or non-filing or to any such person, document or material,

purporting to be certified by the Registrar is, without proof of the office or signature of the Registrar, receivable in evidence as prima facie proof of the facts stated therein for all purposes in any action, proceeding or prosecution. R.S., c. 92, s. 31; 2017, c. 9, s. 10.

#### **Compliance order**

82 (1) After giving a person the opportunity to be heard, the Registrar may issue a compliance order requiring the person to comply with this Act and the regulations if satisfied that the person is contravening, is about to contravene or has contravened this Act or the regulations.

(2) A compliance order must

- (a) name the person in respect of whom the order is issued;
- (b) describe the person's act or practice that is contravening, is about to contravene or has contravened this Act or the regulations;
- (c) identify the provision of this Act or the regulations that is being contravened, is about to be contravened or has been contravened; and
- (d) be dated and signed by the Registrar.

(3) In a compliance order, the Registrar may order a person to stop engaging in or not to engage in a specified act or practice and to comply with this Act and the regulations.

(4) The Registrar shall serve a copy of the compliance order on the person named in the order. 2017, c. 9, s. 11.

#### **Application to Supreme Court**

83 (1) Where the Registrar is satisfied that a person in respect of whose conduct a compliance order has been issued is not complying with the order, the Registrar may apply to the Supreme Court of Nova Scotia for an order directing the person to comply with the compliance order.

(2) Upon hearing an application of the Registrar under subsection (1), the Supreme Court may make any order that the Court considers necessary, in addition to the order directing the person to comply with the compliance order. 2017, c. 9, s. 11.

#### **Publication of information**

84 (1) The Registrar may publish any of the following information, including personal information as defined in the *Freedom of Information and Protection of Privacy Act*:

- (a) the name and business address of a permit holder;
- (b) any information appearing on a permit;
- (c) any information relating to the status of a permit issued under this Act, including the suspension or cancellation of a permit;
- (d) details of any compliance order issued under Section 82;
- (e) details of any court order made under this Act;
- (f) details of any conviction for an offence under this Act;
- (g) any other information prescribed by the regulations.

(2) The Registrar may publish the information referred to in subsection (1) in whatever form and manner the Registrar considers appropriate. 2017, c. 9, s. 11.

#### **Appeal**

85 Any person aggrieved by a decision, order or direction of the Registrar may within 30 days after receiving notice of the decision, order or direction

appeal therefrom to the Supreme Court of Nova Scotia and the judge on the hearing of the appeal may confirm, vary or set aside the decision, order or direction. R.S., c. 92, s. 32; 2017, c. 9, s. 12.

### Regulations

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

(a) providing for the issuance of permits to lenders or any class or classes of lenders and their agents, officers, servants or employees;

(b) prescribing the forms of application for a permit and the information to be supplied by applicants therefor;

(c) prescribing the terms and conditions of a permit or any type or class of permit;

(d) prescribing when a permit or any type or class of permit expires;

(e) imposing restrictions, including the regulation or prohibition of expiry dates less than 36 months on goods, including gift certificates or gift cards, that are exchangeable or redeemable for goods or services;

(f) requiring sellers or lenders or any class of sellers or lenders to be bonded in such form and terms and with such collateral security as are prescribed and providing for the forfeiture of security and the disposition of the proceeds;

(g) respecting the suspension or cancellation of a permit;

(h) declaring that this Act, the regulations or any part of this Act or the regulations does not apply to a buyer or seller or a class or classes of buyers or sellers, or to a borrower or lender or a class or classes of borrowers or lenders;

(i) providing for approval of forms of agreements, assignments and other instruments and documents to be used by lenders;

(j) requiring any class or classes of lenders to submit forms of credit agreements, instruments and other documents used by them or them to the Registrar for approval;

(k) requiring the use by lenders of credit agreements, instruments and other documents that are in a form approved by the Registrar and prohibiting the use by any class or classes of lenders of such agreements, instruments or documents that are not in a form approved by the Registrar;

(l) prescribing the manner in which the cost of borrowing stated as a percentage must be calculated and expressed by any class or classes of lenders, which may be different for different classes of lenders or for different types of businesses carried on by lenders;

(m) prescribing the form of and information to be contained in a statement required by subsection 19(2);

(n) prescribing the manner of determining the apportionment of the cost of borrowing for the purposes of Section 46;

(o) prohibiting collection methods or practices, or prescribing a code of ethics for lenders;

- (p) regulating forms of advertising by lenders relating to the extension of credit;
- (q) prescribing alternative advertisement requirements that apply instead of or in addition to the requirements of Section 47, including different requirements for different forms of credit;
- (r) prescribing the form and content of records relating to lending to be kept by lenders and the length of time for which they must be kept;
- (s) prescribing reports and returns to be made by lenders or any class or classes of lenders and requiring them to be made to the Registrar;
- (t) requiring a contract for consumer sales to which Sections 75 and 76 apply, or for categories of contracts for consumer sales to which Sections 75 and 76 apply, to be written, including setting a minimum value at which a written contract is required;
- (u) respecting disclosure or advertising requirements for consumer sales to which Sections 75 and 76 apply, or for categories of consumer sales to which Sections 75 and 76 apply, including different disclosure or advertising requirements for different categories of consumer sales;
- (v) respecting the form and content of contracts for consumer sales to which Sections 75 and 76 apply, or for categories of consumer sales to which Sections 75 and 76 apply, including different form and content requirements for different categories of consumer sales;
- (w) respecting the cancellation and refunding of money paid under contracts for consumer sales to which Sections 75 and 76 apply, or for categories of consumer sales to which Sections 75 and 76 apply, including different requirements for different categories of consumer sales;
- (x) imposing restrictions on the consumer sale of goods or services, or any category of the consumer sale of goods or services, to which Sections 75 and 76 apply;
- (y) prescribing forms and providing for their use and requiring the information in any form to be verified by affidavit;
- (z) prescribing fees for a permit, searches, certificates and other matters or services rendered or supplied by the Registrar;
- (aa) defining any word or expression used but not defined in this Act;
- (ab) prescribing additional information that may be published by the Registrar under Section 84. R.S., c. 92, s. 33; 1998, c. 8, s. 25; 1999, c. 4, s. 9; 2007, c. 35, s. 1; 2017, c. 9, s. 13; 2018, c. 43, s. 12.

### Regulations

- 87 (1)** The Governor in Council may make regulations
  - (a) respecting classes of goods and services to which Sections 51 to 59 do not apply;
  - (b) prescribing information to be disclosed by a supplier before entering into an internet sales contract with a consumer;

- (c) respecting the manner in which information may be disclosed to a consumer by a supplier before an internet sales contract is entered into;
- (d) prescribing the requirements to be included in a copy of an internet sales contract;
- (e) respecting the sending or provision of copies of internet sales contracts;
- (f) respecting circumstances in which a consumer may cancel an internet sales contract;
- (g) respecting the manner in which a consumer may notify a supplier of cancellation of an internet sales contract;
- (h) respecting applications made pursuant to Section 57;
- (i) prescribing requirements for a request by a consumer to a credit card issuer made under subsection 59(1);
- (j) respecting time periods in which a request by a consumer to a credit card issuer may be made under subsection 59(1);
- (k) defining any word or expression used but not defined in Sections 49 to 59;
- (l) considered necessary or advisable to carry out effectively the intent and purpose of Sections 49 to 59.

**(2)** The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*, 2001, c. 40, s. 2.

CHAPTER C-53

**An Act to Control the Storage  
and Supply of Personal Information  
by Consumer Reporting Agencies**

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

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**Short title**

**1** This Act may be cited as the *Consumer Reporting Act*. R.S., c. 93, s. 1.

**Interpretation and application**

2 (1) In this Act,

“consumer” means a natural person;

“consumer report” means a written, oral or other communication by a consumer reporting agency of information as that word is defined in this Section pertaining to a consumer for consideration in connection with a purpose set out in clause 11(1)(c);

“consumer reporting agency” means a person who for gain or profit furnishes consumer reports;

“file” when used as a noun, means all of the information pertaining to a consumer that is recorded or retained by a consumer reporting agency, regardless of the manner or form in which the information is stored;

“information” means information respecting a consumer’s identity, residence, dependents, marital status, employment, borrowing and repayment history, income, assets and liabilities, credit worthiness, education, character, reputation, health, physical or personal characteristics or mode of living;

“Minister” means the Minister of Service Nova Scotia;

“person” means a natural person, an association of natural persons, a partnership, co-operative or a corporation, and their heirs, executors, administrators, successors and assigns;

“Registrar” means the Registrar of Consumer Reporting Agencies;

“user” means a person who prepares a consumer report for the person’s own use or causes a consumer reporting agency to prepare a consumer report for the person’s use.

(2) This Act applies notwithstanding any agreement or waiver to the contrary. R.S., c. 93, s. 2; 2014, c. 39, s. 4; 2017, c. 9, s. 14.

## ADMINISTRATION

**Registrar of Consumer Reporting Agencies**

3 (1) The Minister shall appoint a Registrar of Consumer Reporting Agencies who has the functions and duties set out in this Act and the regulations and such other functions and duties pursuant to this Act and the regulations as the Minister may determine.

(2) The Minister may, in the absence or incapacity of the Registrar or when the office of the Registrar is vacant, authorize another person to act in the Registrar’s stead.

(3) The Minister may appoint one or more deputy registrars as required to assist the Registrar in the performance of the Registrar’s duties.

(4) A deputy registrar may perform any of the duties and exercise any of the powers of the Registrar as directed by the Registrar.

(5) A person appointed or authorized to act pursuant to this Section must be employed pursuant to the *Civil Service Act* and that Act applies to that person. 2014, c. 39, s. 5; 2017, c. 9, s. 15.

## PERMITS

### Contents of Register

4 The Registrar shall keep a register, to be called the Consumer Reporting Agencies Register, in which the Registrar shall enter the name of every consumer reporting agency that holds a permit under this Act, the name under which the business is carried on, the address or the addresses, if more than one, at or from which the business is carried on and such other matters as are prescribed by the regulations. R.S., c. 93, s. 3; 1999, c. 4, s. 10; 2017, c. 9, s. 17.

### Registration required

5 No person shall conduct or act as a consumer reporting agency unless the person holds a valid permit under this Act. R.S., c. 93, s. 4; 1999, c. 4, s. 11.

### Registration

6 (1) An applicant is entitled to a permit or renewal of a permit by the Registrar except where

(a) having regard to the applicant's financial position, the applicant cannot reasonably be expected to be financially responsible in the conduct of the applicant's business;

(b) the past conduct of the applicant affords reasonable grounds for belief that the applicant will not carry on business in accordance with law and with integrity and honesty;

(c) the applicant is a corporation and

(i) having regard to its financial position, it cannot reasonably be expected to be financially responsible in the conduct of its business, or

(ii) the past conduct of its officers or directors affords reasonable grounds for belief that its business will not be carried on in accordance with law and with integrity and honesty; or

(d) the applicant is carrying on activities that are, or will be, if the applicant is issued a permit, in contravention of this Act or the regulations.

(2) A registration is subject to such terms and conditions to give effect to the purposes of this Act as are consented to by the applicant or prescribed by the regulations.

(3) A permit is not transferable. R.S., c. 93, s. 5; 1999, c. 4, s. 12; 2017, c. 9, s. 18.

**Further information and material**

7 The Registrar may require at any time any further information or material to be submitted by any applicant or any person issued a permit pursuant to this Act within a specified time and may require, where the Registrar considers advisable, verification by affidavit or otherwise of any information or material then or previously submitted. 2017, c. 9, s. 19.

**Refusal of permit or renewal**

8 (1) The Registrar may refuse to issue a permit to an applicant where, in the Registrar's opinion, the applicant is disentitled to a permit under Section 6.

(2) The Registrar may refuse to renew or may suspend or revoke a permit for any reason that would disentitle the permit holder to a permit under Section 6 if the permit holder were an applicant or if the permit holder is in breach of a term or condition of the permit. 1999, c. 4, s. 13; 2017, c. 9, s. 20.

**Cancellation of registration**

9 (1) The Registrar may cancel a permit upon the request in writing of the permit holder in the prescribed form surrendering the permit holder's permit.

(2) Where, within the time prescribed or, if no time is prescribed, before expiry of the permit holder's permit, a permit holder has applied for renewal of the permit and paid the prescribed fee, the permit holder's permit is deemed to continue until

- (a) the renewal is granted; or
- (b) the renewal is refused.

(3) A person aggrieved by a decision of the Registrar may appeal therefrom to a judge of the Supreme Court of Nova Scotia, and the judge may confirm, vary or set aside the decision. R.S., c. 93, s. 7; 1999, c. 4, s. 14; 2017, c. 9, 21.

**New application when circumstances change**

10 A further application for a permit may be made upon new or other evidence or where it is clear that material circumstances have changed. R.S., c. 93, s. 8; 1999, c. 4, s. 15.

## REGULATION OF CONSUMER REPORTING AGENCIES

**Confidentiality**

11 (1) No consumer reporting agency and no officer or employee thereof shall knowingly furnish any information from the files of the consumer reporting agency except in a consumer report given

- (a) in response to the order of a court having jurisdiction to issue such an order;
- (b) in accordance with the written instructions of the consumer to whom the information relates; or
- (c) to a person who it has reason to believe

(i) intends to use the information in connection with the extension of credit to or the collection of a debt of the consumer to whom the information pertains,

(ii) intends to use the information in connection with the entering into or renewal of a tenancy agreement by the consumer,

(iii) intends to use the information for employment purposes,

(iv) intends to use the information in connection with the underwriting of insurance involving the consumer,

(v) intends to use the information to determine the consumer's eligibility for any matter under a statute or regulation where the information is relevant to the requirement prescribed by law,

(vi) otherwise has a direct business need for the information in connection with a business transaction involving the consumer.

(2) No person shall knowingly obtain any information from the files of a consumer reporting agency respecting a consumer except for the purposes referred to in subsection (1).

(3) Notwithstanding subsections (1) and (2), a consumer reporting agency may furnish identifying information respecting any consumer, limited to the consumer's name, address, former addresses, places of employment or former places of employment, to any department of the Province or of Canada or any province thereof, notwithstanding that such information is not to be used for a purpose mentioned in clause (1)(c).

(4) Notwithstanding subsections (1) and (2), where the Minister, or a person designated by the Minister, requests a consumer reporting agency to provide identifying information respecting a consumer, including the consumer's name, address and former addresses, places and former places of employment and social insurance number, for the purpose of collecting a debt or fine owing by the consumer to the Crown in right of the Province,

(a) the consumer reporting agency shall provide the information to the Minister or the Minister's designate, as the case may be; and

(b) the provision of the information is not a consumer report.

(5) A consumer reporting agency shall not sell, lease or transfer title to its files or any of them except to another consumer reporting agency who holds a permit under this Act. R.S., c. 93, s. 9; 2010, c. 47, s. 1; 2017, c. 9, s. 22.

### Reporting

12 (1) Every consumer reporting agency shall adopt all procedures reasonable for ensuring the greatest possible accuracy and fairness in the contents of its consumer reports.

- (2) A consumer reporting agency shall not report
- (a) any information that is not stored in a form capable of being produced under Section 14;
  - (b) any information that is not extracted from information appearing in files stored or collected in a repository located in Canada.
- (3) A consumer reporting agency shall not include in a consumer report
- (a) any information unless the name and address of the source of the information is recorded or retained in its files or can be readily ascertained by the consumer;
  - (b) any information concerning the consumer unless it has made reasonable efforts to verify the information and unless it has recorded in its files the efforts taken to verify the information;
  - (c) information regarding any debt more than six years after the last payment was made or, where no payment was made, more than six years after the date on which the default in payment occurred;
  - (d) information regarding any judgment against the consumer more than six years after the judgment was given, unless the judgment creditor or an agent of the judgment creditor confirms that the judgment remains unpaid, in whole or in part, and the confirmation appears in the file;
  - (e) information as to any judgment against the consumer unless mention is made of the name and, where available, the address of the judgment creditor as given at the date of entry of the judgment and the amount or, where the judgment is known to have been assigned, where available, the name and address of the assignee;
  - (f) information regarding any actions or other court proceedings that are more than six years old or actions or court proceedings commenced against the consumer more than 12 months prior to the making of the report unless the consumer reporting agency has ascertained the current status of the action or proceeding and has a record of this on file;
  - (g) information as to the bankruptcy of a consumer after six years from the date of the discharge of the consumer unless the consumer has been bankrupt more than once;
  - (h) information regarding any criminal or summary conviction charges against the consumer where the charges have been dismissed, set aside, withdrawn or in respect of which a stay of proceedings has been entered;
  - (i) information as to convictions for crimes or summary offences after seven years from the date of conviction or, where the conviction resulted in imprisonment, from the date of the termination of the sentence, provided information as to convictions for crimes shall not be reported if at any time it is learned that after a conviction a full pardon has been granted;

- (j) any information given orally unless the content of the oral report is noted in writing in the file;
- (k) any other information adverse to the consumer's interest more than six years after the event that gave rise to the information; or
- (l) any other information prescribed by the regulations. R.S., c. 93, s. 10; 2018, c. 43, s. 13.

**Consent and notice**

**13 (1)** No person shall procure or cause to be prepared a consumer report respecting a consumer

- (a) without the express written consent of the consumer; or
- (b) unless the person notifies the consumer in writing that a consumer report has been or will be requested and advises the consumer not later than 10 days after the report has been requested of the name and address of the consumer reporting agency.

**(2)** The notice and consent referred to in this Section may be contained in an application for credit, insurance, employment or tenancy if it is clearly set forth in type not less than 10 point in size above the signature of the consumer.

**(3)** Where a user of information contained in a consumer report denies a benefit in whole or in part to a consumer, or increases the cost of the benefit to a consumer, the user shall advise the consumer in writing immediately

- (a) that a benefit has been denied to the consumer in whole or in part or increased in cost;
- (b) of the consumer's right to have disclosed to the consumer all information pertaining to the consumer in the files of the consumer reporting agency from whom the report was obtained;
- (c) of the name and address of the consumer reporting agency;
- (d) of the source and nature of information obtained elsewhere than from a consumer reporting agency. R.S., c. 93, s. 11.

**Disclosure**

**14 (1)** Every consumer reporting agency shall, at the written request of a consumer and during normal business hours, clearly and accurately disclose to the consumer, without charge,

- (a) the nature and substance of all information in its files pertaining to the consumer at the time of the request;
- (b) the sources of its information unless they can be readily ascertained by the consumer;
- (c) the names of the recipients of any consumer report pertaining to the consumer that it has furnished within the preceding 12 months;

(d) copies of any written report made pertaining to the consumer to any other person or, where the report was oral, particulars of the content of such oral report,

and shall inform the consumer of the consumer's right to protest any information contained in the file under Sections 15 and 16 and the manner in which a protest may be made.

(2) A consumer reporting agency may withhold from the disclosures required by subsection (1) any medical information obtained from the consumer's own physician and which the physician has specifically requested in writing be withheld from the consumer in the consumer's own best interest.

(3) The disclosures required under this Section must be made to the consumer

(a) in person if the consumer appears in person and furnishes proper identification;

(b) by telephone if the consumer has made a written request, with sufficient identification, for telephone disclosure and the toll charge, if any, for the telephone call is prepaid by or charged directly to the consumer.

(4) Every consumer reporting agency shall provide trained personnel to explain to the consumer any information furnished to the consumer under this Section.

(5) The consumer is permitted to be accompanied by one other person of the consumer's choosing to whom the consumer reporting agency may be required by the consumer to disclose the consumer's file.

(6) The consumer reporting agency shall permit the consumer to whom information is disclosed under this Section to make an abstract thereof.

(7) A consumer reporting agency shall require reasonable identification of the consumer and a person accompanying the consumer before making disclosures under this Section.

(8) A consumer reporting agency shall not require a consumer to give any undertaking or waive or release any right or chose in action as a condition precedent to the consumer's access to the consumer's file under this Section. R.S., c. 93, s. 12.

### **Protests**

15 (1) Where a consumer disputes the accuracy of any information relating to the consumer in the files of a consumer reporting agency the consumer may file a statement of protest with the consumer reporting agency or the user or both.

(2) Where a statement of protest is filed in accordance with subsection (1), the consumer reporting agency or the user shall immediately

(a) attempt to verify the information and, where the information cannot be verified, expunge the information from the consumer's file; or

(b) where the veracity of the information is sustained, record the protest in the consumer's file,

and report the action taken

(c) to the consumer; and

(d) to any person to whom it furnished a consumer report within the preceding 60 days.

(3) Where a consumer report is made by a consumer reporting agency to a user in the Province and the office of the consumer reporting agency is not located in the Province, the user is responsible for complying with subsection (2).

(4) Where a consumer reporting agency makes a report to a user whose office is located outside the Province, the consumer reporting agency is responsible for complying with subsection (2).

(5) Where a consumer is dissatisfied by the action taken by the consumer reporting agency or the user under this Section the consumer may appeal to the Registrar who shall investigate the matter. R.S., c. 93, s. 13; 2017, c. 9, s. 23.

## ENFORCEMENT

### Changes in information

**16** (1) The Registrar may order a consumer reporting agency to amend or delete any information, or by order restrict or prohibit the use of any information, that in the Registrar's opinion is inaccurate or incomplete or that does not comply with the provisions of this Act or the regulations.

(2) The Registrar may order a consumer reporting agency to furnish notification to any person who has received a consumer report of any amendments, deletions, restrictions or prohibitions imposed by the Registrar.

(3) Where the consumer or consumer reporting agency is aggrieved by a decision of the Registrar under this Section, the consumer or consumer reporting agency may apply to a judge of the Supreme Court of Nova Scotia and the judge may confirm, vary or set aside the decision. R.S., c. 93, s. 14; 2017, c. 9, s. 24.

### Agency to notify Registrar of changes

**17** Every consumer reporting agency shall, within five days after the event, notify the Registrar in writing of

(a) any change in its address for service;

(b) any change in the officers in the case of a corporation or of the members in the case of a partnership; and

(c) in the case of a corporation, any change in the ownership of its shares. R.S., c. 93, s. 15; 2017, c. 9, s. 25.

**Complaints**

**18 (1)** Where the Registrar receives a complaint in respect of a consumer reporting agency and so requests in writing, the consumer reporting agency shall, where it has received the consumer's consent in writing, furnish the Registrar with such information respecting the matter complained of as the Registrar requires.

**(2)** The request under subsection (1) must indicate the nature of the inquiry involved.

**(3)** For the purposes of subsection (1), the Registrar or any person designated in writing by the Registrar may on notice at any reasonable time enter upon the business premises of the consumer reporting agency to make an inspection in relation to the complaint. R.S., c. 93, s. 16; 2017, c. 9, s. 26.

**Investigation ordered by Minister**

**19** The Minister may by order appoint a person to make an investigation into any matter to which this Act applies as may be specified in the Minister's order and the person appointed shall report the result of the person's investigation to the Minister, and for the purposes of the investigation the person making it has all the powers, privileges and immunities of a commissioner appointed under the *Public Inquiries Act*. R.S., c. 93, s. 17.

**Investigation ordered by Registrar**

**20 (1)** Where, upon a statement made under oath, the Registrar believes on reasonable and probable grounds that any person has

(a) contravened any of the provisions of this Act or the regulations; or

(b) committed an offence under the *Criminal Code* (Canada) or under the law of any jurisdiction that is relevant to the person's fitness for holding a permit under this Act,

the Registrar may by order appoint one or more persons to make an investigation to ascertain whether such a contravention of the Act or regulation or the commission of such an offence has occurred and the person appointed shall report the result of the person's investigation to the Registrar.

**(2)** For purposes relevant to the subject-matter of an investigation under this Section, and notwithstanding Section 11, the person appointed to make the investigation may inquire into and examine the affairs of the person in respect of whom the investigation is being made and may

(a) upon production of the person's appointment, enter at any reasonable time the business premises of such person and examine books, papers, documents, consumer files and things relevant to the subject-matter of the investigation; and

(b) inquire into negotiations, transactions, loans or borrowings made by or on behalf of or in relation to such person and into property, assets or things owned, acquired or alienated in whole or in part by the person or any person acting on the person's behalf that are relevant to the subject-matter of the investigation,

and for the purposes of the inquiry the person making the investigation has all the powers, privileges and immunities of a commissioner appointed under the *Public Inquiries Act*.

(3) No person shall obstruct a person appointed to make an investigation under this Section or withhold from that person or conceal or destroy any books, papers, documents or things relevant to the subject-matter of the investigation.

(4) Where a judge of the Supreme Court of Nova Scotia is satisfied, upon an *ex parte* application by the person making an investigation under this Section, that the investigation has been ordered and that such person has been appointed to make it and that there is reasonable ground for believing there are in any building, dwelling, receptacle or place any books, papers, documents or things relating to the person whose affairs are being investigated and to the subject-matter of the investigation, the judge may, whether or not an inspection has been made or attempted under clause (2)(a), issue an order authorizing the person making the investigation, together with such police officer or officers as the person calls upon to assist the person, to enter and search, if necessary by force, such building, dwelling, receptacle or place for such books, papers, documents or things and to examine them, but every such entry and search must be made between sunrise and sunset unless the judge, by the order, authorizes the person making the investigation to make the search at night.

(5) Any person making an investigation under this Section may, upon giving a receipt therefor, remove any books, papers, documents or things examined under clause (2)(a) or subsection (4) relating to the person whose affairs are being investigated and to the subject-matter of the investigation for the purpose of making copies of such books, papers or documents, but such copying must be carried out with reasonable dispatch and the books, papers or documents in question must be promptly thereafter returned to the person whose affairs are being investigated.

(6) Any copy made as provided in subsection (5) and certified to be a true copy by the person making the investigation is admissible in evidence in any action, proceeding or prosecution as prima facie proof of the original book, paper or document and its contents.

(7) The Minister or Registrar may appoint any expert to examine books, papers, documents or things examined under clause (2)(a) or under subsection (4). R.S., c. 93, s. 18; 2017, c. 9, s. 27.

#### **Exceptions to confidentiality**

**21 (1)** Every person employed in the administration of this Act, including any person making an inquiry, inspection or an investigation under Section 18, 19 or 20, shall preserve secrecy in respect of all matters that come to the person's knowledge in the course of the person's duties, employment, inquiry, inspection or investigation and shall not communicate any such matters to any other person except

(a) as may be required in connection with the administration of this Act, and the regulations or any proceedings under this Act or the regulations; or

- (b) to the person's counsel; or
- (c) with the consent of the person to whom the information relates.

(2) No person to whom subsection (1) applies may be required to give testimony in any civil suit or proceeding with regard to information obtained by the person in the course of the person's duties, employment, inquiry, inspection or investigation except in a proceeding under this Act or the regulations. R.S., c. 93, s. 19.

#### **Service of documents**

22 (1) Any notice or order required to be given, delivered or served under this Act or the regulations is sufficiently given, delivered or served if delivered personally or sent by registered mail addressed to the person to whom delivery or service is required to be made at the person's last-known address.

(2) Where service is made by registered mail, the service is deemed to be made on the third day after the day of mailing unless the person on whom service is being made establishes that the person did not, acting in good faith, through absence, accident, illness or other cause beyond the person's control, receive the notice or order until a later date. R.S., c. 93, s. 20.

#### **Order to comply with Act**

23 (1) Where it appears to the Registrar that any person does not comply with any provision of this Act, the regulations or an order made under this Act, notwithstanding the imposition of any penalty in respect of such non-compliance and in addition to any other rights the Registrar may have, the Registrar may apply to a judge of the Supreme Court of Nova Scotia for an order directing such person to comply with such provision, and upon the application the judge may make such order or such other order as the judge thinks fit.

(2) An appeal lies to the Nova Scotia Court of Appeal from an order made under subsection (1). R.S., c. 93, s. 21; 2017, c. 9, s. 28.

#### **Supplying of false information prohibited**

24 No person shall knowingly supply false or misleading information to another who is engaged in making a consumer report. R.S., c. 93, s. 22.

#### **Offence, penalties and limitation period**

25 (1) Every person who

- (a) knowingly furnishes false information in any application under this Act or in any statement or return required to be furnished under this Act or the regulations;
- (b) fails to comply with any order, direction or other requirement made under this Act; or
- (c) contravenes any provision of this Act or the regulations,

and every director or officer of a corporation who knowingly concurs in such furnishing, failure or contravention, is guilty of an offence and on summary conviction

is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than one year, or to both.

(2) Where a corporation is convicted of an offence under subsection (1), the maximum penalty that may be imposed upon the corporation is \$25,000 and not as provided therein. R.S., c. 93, s. 23; 2017, c. 9, s. 29; 2018, c. 43, s. 14.

#### **Limitation period**

**26** A prosecution for an offence under this Act or the regulations may not be commenced more than three years after the later of

- (a) the date on which the offence was committed; and
- (b) the date on which evidence of the offence first came to the attention of the Registrar. 2018, c. 43, s. 15.

#### **Prima facie proof of facts**

**27 (1)** A statement as to

- (a) whether a permit was issued or was not issued to a person under this Act;
- (b) the filing or non-filing of any document or material required or permitted to be filed with the Registrar;
- (c) the time when the facts upon which proceedings are based first came to the knowledge of the Registrar; or
- (d) any other matter pertaining to such issuance or non-issuance of a permit or, filing or non-filing,

purporting to be certified by the Registrar is, without proof of the office or signature of the Registrar, receivable in evidence as prima facie proof of the facts stated therein for all purposes in any action, proceeding or prosecution.

(2) Any document under this Act purporting to be signed by the Minister, or any certified copy thereof, is receivable in evidence in any action, prosecution or other proceeding as prima facie proof that the document is signed by the Minister without proof of the office or signature of the Minister. R.S., c. 93, s. 24; 2017, c. 9, s. 30.

#### **Regulations**

**28 (1)** For the purpose of carrying out the provisions of this Act, the Governor in Council may make regulations

- (a) exempting any class of persons from this Act or the regulations or any provision thereof;
- (b) governing applications for a permit or the renewal of a permit and prescribing terms and conditions of permits;
- (c) requiring the payment of fees on application for a permit or the renewal of a permit, and prescribing the amount of the fees;
- (d) requiring consumer reporting agencies that hold a permit under this Act to be bonded in such form and terms and with such

collateral security as are prescribed, and providing for the forfeiture of bonds and the disposition of the proceeds;

(e) requiring and governing the books, accounts and records that must be kept by consumer reporting agencies;

(f) prescribing information that may not be reported by a consumer reporting agency or contained in its files;

(g) prescribing information that must be contained in a consumer report;

(h) requiring consumer reporting agencies to make returns and furnish information to the Registrar;

(i) prescribing forms for the purposes of this Act and providing for their use;

(j) requiring any information required to be furnished or contained in any form or return to be verified by affidavit;

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

(l) respecting such other matters as the Governor in Council considers necessary for the carrying out of the intent and purposes of this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. R.S., c. 93, ss. 25, 26; 1999, c. 4, s. 16; 2017, c. 9, s. 31; 2018, c. 43, s. 16.

CHAPTER C-54

**An Act to Establish  
a Consumer Services Bureau**

**Table of Contents**

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

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**Short title**

**1** This Act may be cited as the *Consumer Services Act*. R.S., c. 94, s. 1.

**Interpretation**

**2** In this Act,

“Bureau” means the Consumer Services Bureau established by this Act;

“Director” means the Director of Consumer Services appointed under this Act;

“Minister” means the Minister of Service Nova Scotia. R.S., c. 94, s. 2.

**Consumer Services Bureau**

**3 (1)** A Consumer Services Bureau is established.

**(2)** The Governor in Council shall appoint a person in the public service to be Director of Consumer Services.

**(3)** The Director is the chief officer of the Bureau and, subject to the directions of the Minister, shall supervise the work of the Bureau.

**(4)** The members of the staff of the Bureau must be appointed under and are subject to the *Civil Service Act*. R.S., c. 94, s. 3.

**Functions of Bureau**

**4** It is the function of the Bureau and it has power to

(a) initiate, recommend or undertake programs designed to promote the interests of consumers in the Province;

(b) coordinate programs of the Government that are designed to promote the interests of consumers;

- (c) promote and encourage the institution of practices and conduct tending to the better protection of consumers and co-operate with other governments or agencies of governments or any bodies, organizations or persons in programs having similar objects;
- (d) undertake, recommend or assist in programs to assist consumers to be more fully informed about goods and services offered to them;
- (e) undertake research into matters that are within the scope of the functions of the Bureau and co-operate with other governments or agencies of government and other bodies, organizations or persons in carrying out such research;
- (f) investigate, receive and act upon complaints of alleged contraventions of Acts designed to protect consumers, including the *Direct Sellers Regulation Act* and the *Unconscionable Transactions Relief Act*, or respecting practices that are alleged to be contrary to the interests of consumers and endeavour to obtain compliance with any of the Acts and desirable changes in practices to the benefit of consumers;
- (g) counsel persons and groups on their rights and duties under Acts referred to in clause (f);
- (h) establish programs for the education of consumers with respect to credit practices and problems;
- (i) foster and encourage the establishment and operation of non-profit consumer credit counselling agencies; and
- (j) perform such other functions and duties relating to the protection or benefit of consumers as are from time to time assigned to the Bureau by the Governor in Council or the Minister. R.S., c. 94, s. 4.

#### **Establishment of boards and committees**

**5 (1)** The Governor in Council may establish boards, committees or councils representative of consumers to keep the Minister and the Bureau advised as to

- (a) business practices that appear to be unjustified and adverse to the interest of consumers;
- (b) charges to consumers that appear to be unjustified;
- (c) advertising of consumer goods that appears to be misleading;
- (d) alleged contraventions of any Acts administered by the Bureau;
- (e) any other matter of interest to consumers.

**(2)** The Governor in Council may, with respect to any board, committee or council established under this Section,

- (a) appoint or provide for the manner of appointment of its members;
- (b) prescribe the term of office of a member and provide for the payment of remuneration and expenses to its members. R.S., c. 94, s. 6.

**Regulations**

6 The Governor in Council may make regulations

(a) relating to the functions, duties and powers of the Bureau, the Director and members of the staff of the Bureau; and

(b) prescribing procedures and practices to be observed and followed by the Bureau, the Director and members of the staff of the Bureau in the performance of their functions and the exercise of their powers under this Act or any Act administered by the Bureau or the Director.

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CHAPTER C-55

**An Act to Establish a Registry  
for Continuing Care Assistants**

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

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**Short title**

**1** This Act may be cited as the *Continuing Care Assistants Registry Act*. 2021, c. 4, s. 1.

**Purpose**

**2** The purpose of this Act is to improve workforce-planning data for the healthcare system of the Province and to recognize the valuable role that continuing care assistants fulfill in providing supportive healthcare to Nova Scotians. 2021, c. 4, s. 2.

**Interpretation**

**3** In this Act,

“Administrator” means the Administrator designated under Section 4;

“certified continuing care assistant” means a continuing care assistant who has been certified under Section 8 and has been added to the Registry;

“continuing care assistant” means a person who provides assistance with activities of daily living and instrumental activities of daily living to persons of all ages in hospitals, long-term care homes, home care and private residences for the purpose of promoting holistic health and independence and enriching quality of life;

“Continuing Care Assistant Certification Program” means the Continuing Care Assistant Certification Program operated by the Administrator;

“Department” means the Department of Health and Wellness;

“Minister” means the Minister of Health and Wellness;

“Registry” means the Continuing Care Assistants Registry established under Section 5. 2021, c. 4, s. 3.

#### **Administrator**

**4** The Minister may designate a person as the Administrator for the purpose of this Act. 2021, c. 4, s. 4.

#### **Continuing Care Assistants Registry**

**5 (1)** The Administrator shall keep a Continuing Care Assistants Registry in which the names of those persons who qualify for registration pursuant to this Act and the regulations are recorded.

**(2)** The Registry must, in addition to the information referred to in subsection (1), include for each registrant

- (a) a registration number;
- (b) the status of the registrant’s compliance with this Act and the regulations; and
- (c) such other information as may be prescribed by the regulations.

**(3)** The Minister may enter into an agreement with a person or organization for the administration of the Registry. 2021, c. 4, s. 5.

#### **Entry in Registry**

**6 (1)** The Administrator shall, on application, enter in the Registry every person who

- (a) has been certified by the Administrator under the certification process referred to in Section 8; and
- (b) is employed in the Province as a certified continuing care assistant.

**(2)** The Administrator may, on application, enter in the Registry a person who

- (a) has been certified by the Administrator under the certification process referred to in Section 8; and
- (b) is actively pursuing employment in the Province as a certified continuing care assistant.

**(3)** An application under subsection (1) or (2) must include

- (a) the person’s
  - (i) name,
  - (ii) employment status,
  - (iii) employer, and

- (iv) address, telephone number and email address;
- and
- (b) any other information required by the regulations.

(4) A person who meets the criteria referred to in subsection (1) shall apply under that subsection. 2021, c. 4, s. 6.

#### Renewal of registration

7 (1) A person who continues to meet the criteria for registration under subsection 6(1) shall apply to renew the person's registration annually.

- (2) An application under subsection (1) must include
    - (a) any change in the person's
      - (i) name,
      - (ii) employment status,
      - (iii) employer, or
      - (iv) address, telephone number or email address;
    - and
    - (b) any other information required by the regulations.
- 2021, c. 4, s. 7.

#### Certification

8 (1) The Administrator shall, in accordance with the regulations, operate a continuing care assistant certification program.

- (2) The Administrator shall certify a person as a certified continuing care assistant
    - (a) who has successfully completed the certification program; or
    - (b) whose qualifications have been assessed by the Administrator and, in the opinion of the Administrator, has training and experience equivalent to completion of the certification program.
- 2021, c. 4, s. 8.

#### Ownership of Registry and offence

9 (1) The Registry and any information contained in the Registry is the property of the Department.

(2) No person shall disclose information contained in the Registry except in accordance with this Act or the regulations. 2021, c. 4, s. 9.

#### Use of Registry

10 (1) The name, registration number and compliance status of a person listed in the Registry must be available to the public.

(2) The Department may collect, use and disclose information contained in the Registry for the purpose of workforce planning.

(3) The Department may disclose information contained in the Registry to any person for research and analysis consistent with the purpose of this Act.

(4) Information disclosed under subsection (3) must be in a non-identifiable aggregate form.

(5) Information disclosed under subsection (2) or (3) must be secured, stored and managed in accordance with the regulations. 2021, c. 4, s. 10.

### **Prohibition**

**11** No person shall use the title “Certified Continuing Care Assistant”, “continuing care assistant” or any word, title or designation, or any derivation or abbreviation thereof, either alone or in combination with other words, letters or description to imply that the person is a certified continuing care assistant unless the person

- (a) is certified by the Administrator under Section 8; and
- (b) is registered in the Registry. 2021, c. 4, s. 11.

### **Dispute resolution and fine**

**12 (1)** The Administrator shall attempt to resolve a potential offence against this Act or the regulations through informal means, including by providing assistance with registration.

(2) Where a person has committed a potential offence against this Act or the regulations and the Administrator has not been successful in resolving the matter under subsection (1), the Administrator shall change the person’s registration, if any, to indicate that the person is non-compliant.

(3) Where the Administrator has taken steps under subsections (1) and (2) and has provided reasonable opportunity for the person to comply with this Act or the regulations and the person has continued to fail to comply, the Administrator may issue a fine, in accordance with the regulations, of not more than \$50.

(4) Where a fine has been issued under subsection (3) and the offence is not continuing, no prosecution may be commenced respecting the matter for which the fine was issued.

(5) A fine imposed under subsection (3) is a debt owing to the Crown in right of the Province and may be collected in any court of competent jurisdiction. 2021, c. 4, s. 12.

### **Regulations**

- 13 (1)** The Governor in Council may make regulations
- (a) establishing timelines for the purposes of registration and renewal of registration;

- (b) prescribing information that must be included in the Registry;
- (c) respecting information that must be included in an application for registration in the Registry or an application for renewal of registration;
- (d) respecting the Continuing Care Assistant Certification Program;
- (e) respecting information in the Registry that is available to the public;
- (f) respecting the securing, storage and management of information from the Registry disclosed to a person other than the Administrator or Department;
- (g) respecting the registration of other assistive care personnel or health support providers in the Registry;
- (h) respecting fines imposed under Section 12, including
  - (i) the form in which a fine must be issued,
  - (ii) how a fine must be served,
  - (iii) how and to whom a fine may be appealed, and
  - (iv) criteria under which a fine may be forgiven;
- (i) defining any word or expression used but not defined in this Act;
- (j) further defining any word or expression defined in this Act;
- (k) respecting any matter or thing the Governor in Council considers necessary or advisable to effectively carry out the intent and purpose of this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*, 2021, c. 4, s. 13.

CHAPTER C-56

**An Act Respecting  
Contributory Negligence**

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

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**Short title**

**1** This Act may be cited as the *Contributory Negligence Act*. R.S., c. 95, s. 1.

**Apportionment of liability**

**2 (1)** Where by the fault of two or more persons damage or loss is caused to one or more of them, the liability to make good the damage or loss is in proportion to the degree in which each person was at fault but if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability must be apportioned equally.

**(2)** Nothing in this Section operates so as to render any person liable for any damage or loss to which the person's fault has not contributed. R.S., c. 95, s. 3.

**Determination of degrees of fault**

**3** Where damage or loss has been caused by the fault of two or more persons, the court shall determine the degree to which each person was at fault. R.S., c. 95, s. 4.

**Questions of fact**

**4** In every action, the amount of damage or loss, the fault, if any, and the degrees of fault are questions of fact. R.S., c. 95, s. 5.

**Power of court**

**5** Where the damages are occasioned by the fault of more than one party, the court may direct that the plaintiff bear some portion of the costs if the circumstances render this just. R.S., c. 95, s. 6.

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CHAPTER C-57

**An Act Respecting  
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**Short title**

**1** This Act may be cited as the *Controverted Elections Act*. R.S., c. 96, s. 1.

**Interpretation**

**2** In this Act,

“candidate” means a person elected to serve as a member, and any person who has been nominated as a candidate at an election;

“corrupt practice” means an act in reference to the election that is declared to be a corrupt practice by the *Elections Act* or any other Act of the Legislature, or recognized as such by the common law of Parliament;

“county” includes an electoral district;

“Court” means the Supreme Court of Nova Scotia or any judge thereof;

“day” means a calendar day;

“election” means an election of a member or members to serve in the House of Assembly;

“judge” means the judge trying an election or performing any duty to which the enactment in which the expression occurs has reference;

“member” means a member of the House of Assembly;

“prescribed” means prescribed by this Act or by the rules of court made pursuant to this Act;

“respondent” means any member whose election or return is complained of by a proceeding pursuant to this Act;

“rules of court” means rules made as mentioned in this Act. R.S., c. 96, s. 2; 2020, c. 8, s. 66.

**JURISDICTION****Jurisdiction of Court**

**3** The Court has, subject to this Act, the same powers, jurisdiction and authority with reference to an election petition and other proceedings thereon as the Court would have if such petition was an ordinary cause within the jurisdiction of the Court. R.S., c. 96, s. 3.

**Judges to arrange duties**

**4** The rotation or order in which any duties assigned by this Act to a single judge is performed by the judges of the Court, must be arranged by the judges. R.S., c. 96, s. 4.

**PETITIONS****Petition**

**5** A petition complaining of an undue return or undue election of a member, or of no return, or of a double return, or of any unlawful act by a candidate not returned, by which the member or candidate is alleged to have become disquali-

fied to sit in the House of Assembly at any election, may be presented to the Court by any one or more of the following persons:

- (a) a person who had a right to vote at the election to which the petition relates; or
- (b) a candidate at such election,

and such petition is, in this Act, called an "election petition." R.S., c. 96, s. 5.

#### **Petition complaining of no return**

**6** A petition under this Act complaining of no return may be presented, and is deemed to be an election petition within the meaning of this Act, and such order may be made thereon by the Court as is considered expedient for compelling a return to be made, or the Court may allow such petition to be tried in the manner herein provided with respect to ordinary election petitions. R.S., c. 96, s.

#### **Returning officer deemed respondent**

**7** Where an election petition complains of the conduct of a returning officer, such returning officer is for all the purposes of this Act, except the admission of respondents in the returning officer's place, deemed a respondent. R.S., c. 96, s. 7.

#### **Cases may be tried together**

**8** Two or more candidates may be made respondents to the same petition, and their cases may for the sake of convenience be tried at the same time, but in respect to the security required pursuant to Section 9, and for all other purposes of this Act, such petition is deemed to be a separate petition against each respondent. R.S., c. 96, s. 8.

#### **Presentation of petition**

**9** The following provisions are made with respect to the presentation of an election petition pursuant to this Act:

- (a) the petition may be in any prescribed form, but where, or in so far as, no form is prescribed, it need not be in any particular form, but it must complain of the undue return or undue election of a member, or that no return has been made, or that a double return has been made, or of matter contained in any special return made, or of some unlawful act as aforesaid by a candidate not returned, and it must be signed by the petitioner or all the petitioners, if is more than one;
- (b) the petition must be presented within 21 days after the return day of the writ for the election to which the petition relates, unless it questions the return or election upon an allegation of corrupt practices, and specially alleges a payment of money to have been made, or other act of bribery to have been committed, by any member, or on the member's account, or with the member's privity, since the time of such return in pursuance or in furtherance of such corrupt practices, in which case the petition may be presented at any time within 21 days after the date of such payment or act so committed;
- (c) presentation of a petition must be made by delivering it at the office of the prothonotary of the Court for the county in which lies the elec-

toral district to which the petition relates between the hours of 10 a.m. and 4 p.m.;

(d) at the time of the presentation of the petition or within three days afterwards, security for the payment of all costs, charges and expenses that become payable by the petitioner to

(i) any person summoned as a witness on the petitioner's behalf,

(ii) the member whose election or return is complained of,

(iii) the returning officer if the returning officer's conduct is complained of, or

(iv) the candidate not elected, whose conduct is complained of as aforesaid,

must be given on behalf of the petitioner;

(e) the security must be to the amount of \$400, and must be given by a deposit of money with the prothonotary;

(f) the deposit is not valid unless it is made in gold coin or Government of Canada notes, being a legal tender under the statutes of Canada at the time when the deposit is made, or in notes of any chartered bank doing business in Canada;

(g) the prothonotary shall give a receipt for such deposit, which is evidence of the sufficiency thereof;

(h) on the presentation of the petition the prothonotary shall send a copy thereof by mail to the returning officer of the county to which the petition relates, and such returning officer shall forthwith publish a notice thereof once in a newspaper published in the county or, where there is no newspaper published in the county, then in a newspaper circulating in such county and such notice may be in the form prescribed under Section 80. R.S., c. 96, s. 9.

#### Service of notice

**10 (1)** Notice of the presentation of a petition pursuant to this Act and of the security, accompanied with a copy of the petition, must, within five days after the day on which the petition has been presented or within the prescribed time, or within such longer time as the Court under special circumstances of difficulty in effecting service allows, be served on the respondent or respondents.

**(2)** Where service cannot be effected on the respondent or respondents personally within the time granted by the Court or a judge, then it may be effected upon such other person or in such other manner as the Court on the application of the petitioner directs. R.S., c. 96, s. 10.

#### Service as in civil matters

**11** An election petition pursuant to this Act and notice of the presentation thereof, and a copy of the deposit receipt, must be served as nearly as possible in the manner in which an originating notice is served in civil matters, or in such other manner as is prescribed. R.S., c. 96, s. 11.

## PRELIMINARY EXAMINATION OF PARTIES

**Preliminary examination of parties**

**12 (1)** A party to an election petition, whether petitioner or respondent, may, at any time after the petition is served, before or pending the trial thereof, be examined by or before a judge or an examiner in the manner hereinafter directed, by a party adverse in point of interest, touching any matter raised by the petition, and a party so examined may be further examined on the party's own behalf in relation to any matter respecting which the party has been examined in chief.

**(2)** When one of several petitioners or respondents has been so examined, any other petitioner or respondent united in interest may be examined on the petitioner's or respondent's own behalf, or on behalf of those united with the party in interest, to the same extent as the party so examined, but such explanatory examination must be proceeded with immediately after examination in chief, and not at any future period except by leave of the Court. R.S., c. 96, s. 12.

**Oral examination of candidate**

**13** Where a petition has been presented claiming the seat for a candidate, such candidate, although not a party to the petition, may be orally examined as if the candidate was a petitioner. R.S., c. 96, s. 13.

**Method of oral examination**

**14 (1)** Any party to be examined orally pursuant to this Act must be so examined by or before a judge or the prothonotary in which such election petition is pending or before any barrister-at-law named for the purpose by the Court, and such examination must take place in the presence of the parties, their counsel, solicitors or agents.

**(2)** The party so examined orally is subject to cross-examination and re-examination, and such examination, cross-examination and re-examination must be conducted as nearly as may be in the mode now in use in the Court on a trial of an action. R.S., c. 96, s. 14.

**Depositions**

**15 (1)** The depositions taken upon any such oral examination must be taken down in writing by the examiner, not ordinarily by question and answer, but in the form of a narrative, and when completed must be read over to the witness and signed by the witness in the presence of the parties, or of such of them as think fit to attend.

**(2)** Where the witness refuses or is unable to sign the deposition, the examiner shall sign the same, and such examiner may upon every examination state any special matter to the Court if the examiner thinks fit.

**(3)** It is in the discretion of the examiner to put down any particular question or answer if there appears to be any special reason for doing so.

**(4)** Any question that is objected to shall at the request of either party be noticed or referred to by the examiner in or upon the deposition, and the examiner shall state an opinion thereon to the counsel, solicitors, agents or parties

and, where requested by either party, the examiner shall refer to such statement on the face of the deposition. R.S., c. 96, s. 15.

#### **Transmission and copies of depositions**

**16** When the examination before the examiner is concluded, the original depositions, authenticated by the signature of such examiner, must be transmitted by the examiner to the prothonotary's office at which the petition was presented, and any party to the petition may have a copy thereof, or of any part or portion thereof, upon payment for the same in such manner as is prescribed by the Court in that behalf. R.S., c. 96, s. 16.

#### **Attendance enforced by subpoena**

**17 (1)** The attendance of a party or other person for oral examination or cross-examination before the examiner may be enforced by subpoena to appear and give testimony or to appear and to bring specified document, records or things in the like manner as the attendance of such party or person at the trial of the petition may be enforced.

**(2)** Any party or person upon being served with such subpoena is bound to attend before the examiner, but such party or person is entitled to the like payment for attendance and expenses as if the party or person had been subpoenaed to attend upon the trial. R.S., c. 96, s. 17.

#### **Examination of prisoner**

**18** The sheriff, jailer or other officer having the custody of any prisoner, may take such prisoner for examination before the examiner under the authority of this Act, if so ordered by the Court or a judge. R.S., c. 96, s. 18.

#### **Notice of oral examination**

**19** Forty-eight hours notice of any such oral examination or cross-examination must be given to the opposite party or parties. R.S., c. 96, s. 19.

#### **Contempt of court**

**20 (1)** Any party or person who refuses or neglects to attend at the time and place appointed for the party's or person's examination or cross-examination, or who refuses to be sworn, or to answer any lawful question put to the party or person by the examiner or by any party entitled to do so, or the party's or person's counsel, agent or solicitor, may be punished as for a contempt of court.

**(2)** Where a witness demurs or objects to any question put to the witness, the question so put and the demurrer or objection of the witness thereto must be taken down by the examiner and transmitted by the examiner to the prothonotary's office at which the petition was presented, and the validity of such demurrer or objection must be decided by the Court.

**(3)** The costs of and occasioned by such demurrer or objection are in the discretion of the Court. R.S., c. 96, s. 20.

**Use of only part of examination**

**21** Any party may at the trial or other proceedings of such petition use in evidence any part of the examination of the opposite party, provided always that in such case the Court may look at the whole of the examination and, where it is the opinion that any other part is so connected with the part so to be used that the last mentioned part ought not to be used without such other part, it may direct such other part to be put in evidence. R.S., c. 96, s. 21.

## PRODUCTION OF DOCUMENTS

**Production of documents**

**22 (1)** Any party to an election petition, whether petitioner or respondent, may at any time after such petition is served, before or pending the trial thereof, obtain an order of the Court requiring the adverse party to

(a) produce within 10 days after the service thereof, under oath, all documents in the adverse party's custody or power relating to the matters in question, saving all just exceptions; and

(b) deposit the documents with the prothonotary of the Court at the office at which the petition was presented,

and upon such documents being produced, the party requiring such production, or the party's solicitor or agent, may inspect the same and take copies thereof.

**(2)** Where any person upon whom an order to produce has been served wishes to use any such exception as above mentioned, the person shall in the person's affidavit on production assign a sufficient reason why the person should not produce and deposit the same in the manner aforesaid.

**(3)** Such order may be granted in vacation. R.S., c. 96, s. 22.

**Service of order**

**23** The order for the production of documents need not be personally served, and it is sufficient to serve the same upon the solicitor or agent of the party. R.S., c. 96, s. 23.

**Form of affidavit**

**24** The affidavit on production, to be made by the party who has been served with the order for production, may be in the form prescribed under Section 80. R.S., c. 96, s. 24.

**Contempt of court**

**25** Any party who neglects or refuses to obey an order for the production of documents may be punished as for a contempt of court. R.S., c. 96, s. 25.

## TRIAL OF PETITIONS

**All petitions dealt with as one**

**26** Where more petitions than one are presented relating to the same election or return, all such petitions must be dealt with as one petition. R.S., c. 96, s. 26.

**Trial by judge without jury**

**27 (1)** Every election petition must be tried by one of the judges of the Court without a jury, and it is competent for the Court, on such trial, to decide any question raised as to the admissibility of the evidence offered or to receive such evidence under reserve and subject to adjudication at the final hearing.

**(2)** The trial of an election petition must take place in the county the election or return for which is in question, but where it appears to the Court that special circumstances exist that render it desirable that the petition should be tried elsewhere than in such county, the Court may appoint such other place for the trial as appears most convenient.

**(3)** Notice of the time and place at which an election petition will be tried must be given in the prescribed manner not less than 14 days before the day on which the trial is to take place.

**(4)** The judge at the trial may adjourn the same from time to time and from any one place to another place as to the judge seems expedient. R.S., c. 96, s. 27.

**Time limit on commencement of trial**

**28 (1)** The trial of every election petition must be commenced within six months from the time when the petition was presented, and must be proceeded with from day to day until such trial is over but, where at any time it appears to the Court that the respondent's presence at the trial is necessary,

(a) the trial may not be commenced during any session of the Legislature; and

(b) in the computation of any time or delay allowed for any step or proceeding in respect to any such trial, or for the commencement thereof as aforesaid, the time occupied by such session of the Legislature may not be included.

**(2)** Where at the expiration of three months after the petition has been presented the day for trial has not been fixed, any voter may, on application, be substituted for the petitioner on such terms as the Court thinks just. R.S., c. 96, s. 28.

**Court may enlarge time for trial**

**29** The Court may, notwithstanding anything in Section 28, from time to time enlarge the time for the commencement of the trial if, on an application for that purpose, supported by affidavit, it appears that the requirements of justice render such enlargement necessary. R.S., c. 96, s. 29.

**Trial similar to sitting of Supreme Court**

**30** The judge must be received and attended at the place where the judge is about to try an election petition pursuant to this Act, in the same manner, so far as circumstances will admit, as if the judge were about to hold a sitting of the Supreme Court. R.S., c. 96, s. 30.

**Jurisdiction of judge**

**31** On the trial of an election petition, and in other proceedings pursuant to this Act, the judge has, subject to this Act, the same powers, jurisdiction and authority as a judge of the Supreme Court presiding at the trial of an ordinary action, and the court held by the judge for the trial of an election petition is a court of record. R.S., c. 96, s. 31.

**Charge of corrupt practices**

**32** Unless the judge otherwise directs, any charge of corrupt practices may be gone into and evidence in relation thereto received, before any proof has been given of agency on the part of any candidate in respect to such corrupt practices. R.S., c. 96, s. 32.

**Subpoena of witnesses**

**33** Witnesses must be subpoenaed and sworn in the same manner as nearly as circumstances admit as in the trial of an ordinary action. R.S., c. 96, s. 33.

**Judge may compel attendance of witness**

**34** On the trial of an election petition pursuant to this Act, the judge may, by order under the judge's hand, compel the attendance of any person as a witness who appears to the judge to have been concerned in the election to which the petition relates, and any person who refuses to obey such order is guilty of contempt of court. R.S., c. 96, s. 34.

**Examination of witness by judge**

**35** The judge may examine and re-examine any witness so compelled to attend, or any person in court, although such witness or person is not called and examined by any party to the petition and, after the examination of a witness as aforesaid by a judge, such witness may be cross-examined by or on behalf of the petitioner and respondent, or either of them. R.S., c. 96, s. 35.

**No refusal on ground of privilege**

**36** No person is excused from answering any question put to the person in any action, suit or other proceeding in any court, or before any judge, commissioner or other tribunal touching or concerning any election, or to the conduct of any person thereat or in relation thereto, on the ground of any privilege, but no answer given by a person claiming to be excused on the ground of privilege may be used in any proceeding under any Act of the Legislature against any such person. R.S., c. 96, s. 36.

**Fees for witnesses**

**37 (1)** The fees for travel and attendance payable to any person appearing to give evidence at the trial of an election petition pursuant to this Act are the same, and payable in the same manner, as those allowed to witnesses in an ordinary action in the Supreme Court, and may be allowed to such person by a certificate under the hand of the judge or prothonotary, and such fees are deemed costs of the party calling the witness, and must be taxed against such party interested in the trial of such petition as the judge determines.

(2) Where the witness was called and examined by the judge the fees of such witness for travel and attendance are deemed part of the expenses of providing a court. R.S., c. 96, s. 37.

#### **Employment of stenographer**

38 The judge may, in the judge's discretion, employ a stenographic reporter to take down the oral evidence given by witnesses at the trial of the petition, and the expense of employing such are costs in the cause. R.S., c. 96, s. 38.

#### **Respondent may give evidence**

39 On the trial of a petition pursuant to this Act, complaining of an undue return and claiming the seat for any person, the respondent may give evidence to prove that the election of such person was undue in the same manner as if such person has presented a petition complaining of such election. R.S., c. 96, s. 39.

#### **Determination to be made by judge**

40 (1) The judge who tried a petition shall determine whether the member whose return or election is complained of, or any and what other person, was duly returned or elected, or whether the election was void, and other matters arising out of the petition and requiring the judge's determination, and shall forthwith certify in writing such determination to the Provincial Secretary.

(2) Upon the certificate being given, the determination is final to all intents and purposes, subject only to the appeal hereinafter mentioned. R.S., c. 96, s. 40.

#### **Report after charge of corrupt practice**

41 When a charge is made in an election petition of a corrupt practice having been committed at the election to which the petition relates, the judge shall, in addition to such certificate and at the same time, report in writing to the Provincial Secretary

(a) whether any corrupt practice has or has not been found to have been committed, whether with or without the actual knowledge and consent of any candidate at the election, stating the name of the candidate and the nature of such corrupt practice;

(b) the names of any persons who have been proved at the trial to have been guilty of any corrupt practice;

(c) whether corrupt practices have, or whether there is reason to believe that corrupt practices have, extensively prevailed at the election to which the petition relates; and

(d) whether the inquiry into the circumstances of the election has been rendered incomplete by the action of any of the parties to the petition, and that further inquiry as to whether corrupt practices have extensively prevailed is desirable. R.S., c. 96, s. 41.

#### **Judge may make special report**

42 The judge may at the same time make a special report to the Provincial Secretary as to any matters arising in the course of the trial an account of which,

in the judge's judgement, ought to be submitted to the House of Assembly. R.S., c. 96, s. 42.

#### PROCEEDINGS OF PROVINCIAL SECRETARY UPON REPORT

##### **Duties of Provincial Secretary**

**43 (1)** The Provincial Secretary shall at the earliest practicable moment after the Provincial Secretary receives the certificate and report, if any, of the Court, give the necessary directions and adopt all the proceedings necessary for confirming or altering the return, or for the issuing of a writ for a new election, or for otherwise carrying the determination of the Court into execution, as circumstances require.

**(2)** The Provincial Secretary shall, without delay, if the Legislature is then sitting, or where it is not then sitting, within five days after the beginning of the then next session of the Legislature, communicate to the House of Assembly the determination, report and certificate of the Court and the Provincial Secretary's own proceedings thereon. R.S., c. 96, s. 43.

##### **Order as a result of special report**

**44** Where the judge makes a special report, the House of Assembly may make such order in respect of such special report as it thinks proper. R.S., c. 96, s. 44.

##### **Member not entitled to take seat**

**45** Where the judge determines that the election or return was void, the member returned is not entitled to take the member's seat or vote in the House of Assembly pending an appeal from the decision. R.S., c. 96, s. 45.

##### **Writ for new election**

**46** A writ for a new election may not be issued until after the expiration of eight days from the decision of the judge declaring the election or return to be void and, where an appeal is taken from the decision or from the part declaring the election or return to be void, the writ may not be issued pending the appeal. R.S., c. 96, s. 46.

#### SPECIAL CASE

##### **Special case**

**47 (1)** Where, upon the application of a party to an election petition duly made to the judge, it appears to the judge that the case raised by the petition can be conveniently stated as a special case, the judge may direct the same to be stated accordingly, and any such special case must, as far as possible, be heard before the judge, who shall thereupon hear and determine the same.

**(2)** The judge shall, except in the case mentioned in Section 48, certify such determination to the Provincial Secretary and, upon the certificate being given, the determination is final to all intents and purposes. R.S., c. 96, s. 47.

**Appeal of decision of judge**

**48** Any party to an election petition pursuant to this Act who is dissatisfied with the decision of the judge on any question of law or of fact and who desires to appeal to the Nova Scotia Court of Appeal against the decision, may, within eight days from the day on which the decision was given, deposit with the prothonotary of the Supreme Court for the county in which lies the electoral district to which the petition relates the sum of \$100 as security for costs of the appeal, and thereupon the prothonotary shall forthwith notify the Chief Justice of Nova Scotia that the deposit has been made. R.S., c. 96, s. 48.

**Time for hearing appeal**

**49** The Chief Justice of Nova Scotia shall without delay fix a time for the hearing of the matter of the petition on such appeal at an early day, and notice hereof must be given by the prothonotary at Halifax to the party appealing. R.S., c. 96, s. 49.

**Notice of appeal**

**50** The party so appealing shall thereupon within three days after receipt of the notice, or within such further time as the Court of Appeal or a judge thereof upon application allows, give to the other parties affected by the appeal or the respective solicitors or agents by whom the parties were represented on the trial of the petition, notice in writing that the matter of the petition will be heard on appeal at the time so fixed, and in and by the same notice the party so appealing may, where the party desires, limit the subject of the appeal to any special and defined question or questions. R.S., c. 96, s. 50.

**Judgment on appeal**

**51** The appeal must thereupon be heard and determined by the Court of Appeal, and such judgment must be pronounced, both upon a question of law and of fact, as in the opinion of the Court of Appeal should have been delivered by the judge whose decision is appealed against. R.S., c. 96, s. 51.

**Court to draw inferences of fact**

**52** Upon any appeal involving questions of fact, the Court of Appeal shall review the decision upon questions of fact as well as of law, and shall draw such inference from the facts or evidence as the judge who tried the case should have drawn. R.S., c. 96, s. 52.

**Powers of court on appeal**

**53** The Court of Appeal has all the powers and duties as to amendment or otherwise of the judge from whom the appeal is had, together with full discretionary power to receive further evidence upon questions of fact, such evidence to be either by oral examination in court, by affidavit, or by deposition taken before any judge or other person whom the Court of Appeal names. R.S., c. 96, s. 53.

**Judge may make report to Court**

**54 (1)** Where a decision given by the judge depends in whole or in part upon the credit given by the judge to particular witnesses, and the decision is appealed against, the judge may make a written report as to the demeanour of the

witnesses and their mode of giving their evidence, together with the reasons of the judge for giving credit to particular witnesses.

(2) With or without such report, the Court of Appeal, in view of the whole case as it then appears, may reverse or confirm the decision appealed from, or the Court of Appeal may require any witnesses to be re-examined, and further evidence to be given, orally, before the Court of Appeal or otherwise, upon any question of fact, and after such re-examination and further evidence, the Court of Appeal shall pronounce the proper judgment in the case. R.S., c. 96, s. 54.

#### **Order for costs**

55 The Court of Appeal may make such order as to the return of the deposit and as to the costs of the said appeal as the Court of Appeal thinks just. R.S., c. 96, s. 55.

#### **Judgment to be certified**

56 The prothonotary of the Supreme Court at Halifax shall thereupon certify to the Provincial Secretary the judgment and decision of the Court of Appeal upon appeal. R.S., c. 96, s. 56.

#### **Court may grant new trial**

57 The Court of Appeal, upon such conditions as to costs and otherwise as the Court of Appeal thinks fit, may grant a new trial and may remit the case back to the judge who tried the same or to some other judge and, subject to the directions given by the Court of Appeal, the case must be tried as if there had been no previous trial. R.S., c. 96, s. 57.

### **COSTS**

#### **Costs of petition**

58 (1) All costs, charges and expenses of and incidental to the presentation of an election petition pursuant to this Act, and to the proceedings consequent thereon, with the exception of such costs, charges and expenses as are by this Act otherwise provided for, must be defrayed by the parties to, or those opposing, the petition in such manner and in such proportions as the Court determines, regard being had to the disallowance of any costs, charges or expenses that, in the opinion of the Court, have been caused by vexatious conduct, unfounded allegations or unfounded objections on the part either of the petitioner or respondent, and regard being had to the discouragement of any needless expense by throwing the burden of defraying the same on the parties by whom it has been caused, whether such parties are or are not on the whole successful.

(2) The costs may be taxed according to the same rules as costs are taxed in the Court between parties in ordinary actions, and such costs may be recovered in the same manner as costs in such actions, or in such other manner as may be prescribed. R.S., c. 96, s. 58.

#### **Costs awarded out of deposit**

59 Where costs are awarded in favour of any party against any petitioner, such party, after the expiration of 30 days from the rendering of the decision

by the Court, upon the production of a certificate of taxation from the taxing authority, is entitled to receive out of the deposit

(a) where the aggregate of the costs taxed against the petitioner, certificates thereof are within the period of 30 days filed with the prothonotary, does not exceed the deposit, the amount so taxed; or

(b) where the total amount of the certificates so filed as aforesaid exceeds the deposit, the petitioner's proportion thereof,

and in the event last aforesaid such party is entitled forthwith to issue execution according to the practice in ordinary actions against the petitioner's goods or lands for the residue of the costs so taxed to the petitioner as aforesaid. R.S., c. 96, s. 59.

#### WITHDRAWAL AND ABATEMENT OF PETITION

##### Withdrawal of petition

**60 (1)** No election petition pursuant to this Act may be withdrawn without the leave of the Court upon special application to be made in and at the prescribed manner, time and place.

(2) No such application may be made until the prescribed notice has been given in the county to which the petition relates of the intention of the petitioner to make an application for the withdrawal of the petition.

(3) On hearing of the application for withdrawal, any person who might have been a petitioner in respect to the election to which the petition relates may apply to the Court to be substituted as a petitioner for the petitioner so desirous of withdrawing the petition.

(4) The Court may, where it thinks fit, substitute as petitioner any such applicant as aforesaid and may also, where the proposed withdrawal is, in the opinion of the Court, induced by any corrupt bargain or consideration, by order direct that the security given on behalf of the original petitioner must remain as security for any costs that may be incurred by the substituted petitioner, and that to the extent of the sum deposited as such security the original petitioner is liable to pay the costs of the substituted petitioner.

(5) Where no such order is made with respect to the security given on behalf of the original petitioner, security to the same amount as would be required in the case of a new petition, and subject to the like conditions, must be given on behalf of the substituted petitioner, before the petitioner proceeds with the petition and within the prescribed time after the order of substitution.

(6) Subject as aforesaid, a substituted petitioner stands in the same position, as nearly as may be, and is subject to the same liabilities, as the original petitioner.

(7) Where a petition is withdrawn, the petitioner is liable to pay the costs of the respondent, unless the Court or judge otherwise orders.

(8) Where there are more petitioners than one, no application to withdraw a petition may be made except with the consent of all the petitioners. R.S., c. 96, s. 60.

**Withdrawal result of corrupt practice**

**61** In every case of the withdrawal of an election petition pursuant to this Act, where the Court is of the opinion that the withdrawal of such petition was the result of any corrupt arrangement, or in consideration of the withdrawal of any other petition, the Court shall report such opinion to the Provincial Secretary, stating the reasons therefor and the circumstances attending the withdrawal. R.S., c. 96, s. 61.

**Abatement of election petition**

**62 (1)** An election petition is abated by the death of a sole petitioner or of the survivor of several petitioners.

**(2)** The abatement of a petition does not affect the liability of the petitioner to the payment of costs previously incurred.

**(3)** On the abatement of a petition, the prescribed notice of the abatement having taken place must be given in the county to which the petition relates and, within the prescribed time after the notice is given, any person who might have been a petitioner in respect to the election to which the petition relates may apply to the Court, in the prescribed manner, and at the prescribed time and place, to be substituted as petitioner.

**(4)** The Court may, where it thinks fit, substitute as a petitioner any applicant who is desirous of being substituted, and on whose behalf security to the same amount is given as is required in the case of a new petition. R.S., c. 96, s. 62.

**Respondent no longer involved in petition**

**63 (1)** Where before the trial of any election petition

- (a) the respondent dies;
- (b) the House of Assembly has resolved that the respondent's seat is vacant;
- (c) the respondent gives notice to the Court in and at the prescribed manner and time that the respondent does not intend to oppose or further to oppose the petition,

notice of that event having taken place must be given in the county to which the petition relates and, within the prescribed time after the notice is given, any person who might have been a petitioner in respect to the election to which the petition relates may apply to the Court to be admitted as a respondent to oppose the petition, or so much thereof as remains undisposed of.

**(2)** A person applying under subsection (1) must on such application be admitted accordingly to oppose such petition or the undisposed portion thereof, either with the respondent if there is one, or in place of the respondent, and any number of persons not exceeding three may be so admitted.

**(3)** If an event referred to in subsection (1) happens during the trial, the judge shall adjourn the same, in order that notice that the event has happened may be given as herein provided, and the person or persons so admitted are subject to the same liability as the respondent with respect to any costs thereafter incurred. R.S., c. 96, s. 63.

**Respondent cannot appeal or sit in House**

**64 (1)** A respondent who has given the prescribed notice that the respondent does not intend to oppose or further to oppose the petition is not allowed to appeal or act as a party against such petition in any proceedings thereon, and may not sit or vote in the House of Assembly until the House has been informed of the report on the petition.

**(2)** The Court shall, in all cases in which such notice has been given in the prescribed time and manner, report the same to the Provincial Secretary. R.S., c. 96, s. 64.

**Petitioner may withdraw petition**

**65 (1)** Where

(a) an election petition pursuant to this Act complains of a double return;

(b) the respondent has given notice in the prescribed time and manner that it is not the respondent's intention to oppose the petition; and

(c) no person has been admitted in pursuance of this Act to oppose the petition,

the petitioner, where there is no petition complaining of the other member returned on such double return, may withdraw the petition, by notice addressed to the prescribed officer.

**(2)** Upon such withdrawal the prescribed officer shall report the fact to the Provincial Secretary, and the House of Assembly shall, thereupon, give the necessary directions for amending the double return in such manner as the case required. R.S., c. 96, s. 65.

## RULES OF COURT

**Rules of Court**

**66** The judges of the Supreme Court or a majority of them may from time to time make, revoke and alter general Rules of Court, for the effectual execution of this Act and of the intention and objects thereof, and the regulation of the practice, procedure and costs with regard to election petitions, the trial thereof and the certifying and reporting thereon, and such rules must be forthwith published in the Royal Gazette. R.S., c. 96, s. 66.

**Deemed rules**

**67** Any general rules not inconsistent with this Act are deemed to be within the powers conferred by this Act and, from the date of their publication in the Royal Gazette and while unrepealed, are of the same force as if they were herein enacted. R.S., c. 96, s. 67.

**Rules laid before House of Assembly**

**68** Any Rules of Court made in pursuance of this Act must be laid before the House of Assembly within three weeks after they are made, where the Legisla-

ture is then sitting or, where the Legislature is not then sitting, within three weeks after the beginning of the then next session of the Legislature. R.S., c. 96, s. 68.

**Principles, practice and rules to be observed**

**69** So far as the rules made under the authority of this Act do not extend the principles, practice and rules on which election petitions touching the election of members of the House of Assembly were dealt with on the day immediately preceding May 6, 1875, those principles, practices and rules must be observed, so far as consistently with this Act they can be observed by the Court. R.S., c. 96, s. 69.

GENERAL PROVISIONS

**Court may extend time periods**

**70** The Court has, upon sufficient cause being shown, power on the application of any of the parties to a petition, to extend, from time to time, the period limited by this Act or by Rules of Court for taking any steps or proceedings by such party. R.S., c. 96, s. 70.

**Expenses of judge and sheriff**

**71** The travelling and other expenses of a judge, and all expenses properly incurred by the sheriff or other officer in consequence of any sitting for the trial of an election petition, and providing a court room and accessories, must be defrayed out of the General Revenue Fund. R.S., c. 96, s. 71.

**Persons entitled to practise before Court**

**72** In cases of election petitions and all matters relating thereto before the Court, every person who is entitled to practise as a solicitor in the Province may practise as solicitor or agent, and any person who is entitled to practise as a barrister-at-law may practise as a counsel. R.S., c. 96, s. 72.

**Proceedings on petition continued**

**73** An election petition may be presented, and the trial of an election petition must be proceeded with, notwithstanding the acceptance by the respondent of an office of profit under the Crown, or the resignation of the respondent's seat, but the respondent may, notwithstanding anything in this or any other Act, accept office at any time after the election. R.S., c. 96, s. 73.

**Trial notwithstanding prorogation of House**

**74** The trial of an election petition must be proceeded with notwithstanding the prorogation of the House of Assembly. R.S., c. 96, s. 74.

**Questioning of election or return**

**75** No election or return to the House of Assembly may be questioned except in accordance with this Act. R.S., c. 96, s. 75.

**Principles regarding computation of time**

**76** For the purposes of this Act, the same principles and practice regarding computation of time apply and obtain as in ordinary actions and proceedings in the Court. R.S., c. 96, s. 76.

**Swearing of affidavits**

**77** Any affidavit made in proceedings on an election petition or in any proceedings incidental thereto may be sworn in the same manner and before the same person as an affidavit in an ordinary action in the Court. R.S., c. 96, s. 77.

**Form of notice given by returning officer**

**78** Where the returning officer is by this Act required or authorized to give any public notice, and no special mode of giving the same is mentioned, the returning officer may give the same by advertisement, placards, handbills or such other means as the returning officer thinks best calculated to give the information to the voters. R.S., c. 96, s. 78.

**Duty of prothonotary**

**79** The prothonotary of the Court for every county in which an election is held shall,

(a) where no petition has been presented pursuant to this Act relating to the election within the time prescribed by this Act, forthwith after the expiration of such time; and

(b) where such petition or petitions have been presented, forthwith upon the determination of every such petition,

certify in writing under the seal of the Court to the Chief Electoral Officer at such election that no such petition has been presented or that every such petition has been determined and finally disposed of. R.S., c. 96, s. 79; 2011, c. 5, s. 362.

**Regulations**

**80 (1)** The Provincial Secretary may make regulations prescribing forms for the purposes of clause 9(h) and Section 24.

**(2)** The forms contained in the Schedule to Chapter 96 of the Revised Statutes, 1989, are deemed to be prescribed pursuant to subsection (1) and to have been published in accordance with the *Regulations Act* and may be amended or repealed pursuant to this Section.

**(3)** The exercise of the Provincial Secretary of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*.

CHAPTER C-58

**An Act Respecting  
Short Forms of Conveyances  
and to Simplify Conveyances**

**Table of Contents**

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

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**Short title**

**1** This Act may be cited as the *Conveyancing Act*. R.S., c. 97, s. 1.

PART I

**Interpretation**

**2** In this Part and the Schedules to this Part, unless a contrary intention appears,

“lands” extends to all freehold tenements and hereditaments, whether corporeal or incorporeal, or any undivided part or share therein respectively;

“party” means and includes any body politic or corporate, as well as an individual. R.S., c. 97, s. 2.

**Meaning of terms in deed**

3 (1) Where a deed made according to the form set out in Schedule A to this Part, or any such deed expressed to be made under this Part, or referring thereto, contains any of the forms of words contained in column one of Schedule D to this Part and distinguished by any number therein, such deed is to be taken to have the same effect, and is to be construed as if it contained the form of words contained in column two of Schedule D, and distinguished by the same number as is annexed to the form of words used in the deed, but it is not necessary in any such deed to insert any such number.

(2) Such deed, where purporting to grant to the grantee the lands therein described “in fee simple”, is sufficient to convey to the grantee the whole estate of the grantor in such lands. R.S., c. 97, s. 3.

**Meaning of terms in lease**

4 Where a lease under seal made according to the form set out in Schedule B to this Part, or any other such lease expressed to be made under this Part, or referring thereto, contains any of the forms of words contained in column one of Schedule E to this Part and distinguished by any number therein, such lease is to be taken to have the same effect, and is to be construed as if it contained the form of words contained in column two of Schedule E and distinguished by the same number as is annexed to the form of words used in the lease, but it is not necessary in any such lease to insert any such number. R.S., c. 97, s. 4.

**Covenants not to assign or sublet without leave**

5 Unless the contrary is expressly stated in the lease, all covenants not to assign or sublet without leave, entered into by a lessee in any lease under this Part, run with the land demised, and bind the heirs, executors, administrators and assigns of the lessee whether mentioned in the lease or not, unless the terms of the lease otherwise expressly provide, and the proviso for re-entry contained in Schedule E to this Part, when inserted in a lease, applies to a breach of either an affirmative or negative covenant. R.S., c. 97, s. 5.

**Meaning of terms in mortgage**

6 Where a mortgage of real property in the Province made according to the form set out in Schedule C to this Part, or any other such mortgage expressed to be made under this Part, or referring thereto, contains any of the form of words contained in column one of Schedule F to this Part, and distinguished by any number therein, such mortgage is to be taken to have the same effect, and is to be construed as if it contained the form of words contained in column two of Schedule F, and distinguished by the same number as is annexed to the form of words used in such mortgage, but it is not necessary in any such mortgage to insert any such number. R.S., c. 97, s. 6.

**Other documents not affected**

7 Any deed, lease or mortgage, or part of a deed, lease or mortgage, that fails to take effect by virtue of this Part, is, nevertheless, as effective to bind the parties thereto, as if this Part had not been passed. R.S., c. 97, s. 7.

**Schedules deemed part of Act**

**8** Schedules A, B, C, D, E, F and G to this Part, and the directions and forms therein contained, are deemed to be part of this Act. R.S., c. 97, s. 8.

SCHEDULE A

Form of Deed

This Indenture made the . . . . . day of . . . . . two thousand and . . . . . in pursuance of Part I of the *Conveyancing Act*.

Between (*here insert names of parties, and recitals if any*)

Witnesseth, that in consideration of . . . . . dollars of lawful money of Canada, now paid by (*grantee*) to (*grantor*), the receipt whereof is hereby acknowledged, (*grantor*) grants unto (*grantee*) in fee simple (*or otherwise as the case may be*) etc., all, etc., (*parcels*)

(*here insert covenants, or any other provisions*)

In witness whereof the said parties hereto have hereunto set their hands and seals.

R.S., c. 97, Sch. A.

SCHEDULE B

Form of Lease

This Indenture made the . . . . . day of . . . . . two thousand and . . . . . , in pursuance of Part I of the *Conveyancing Act*.

Between . . . . . of the first part, and  
. . . . . of the second part,

Witnesseth that in consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the party (*or parties*) of the second part, that party's (*or those parties'*) executors, administrators and assigns, to be paid, observed and performed, the party (*or parties*) of the first part has (*or have*) demised and leased, and by these presents does (*or do*) demise and lease unto the party (*or parties*) of the second part, that party's (*or those parties'*) executors, administrators and assigns, all that messuage or tenement situate (*or all that parcel or tract of land situate*) lying and being (*insert description of the premises with sufficient certainty*). To have and to hold the said demised premises for and during the term of . . . . . to be computed from the . . . . . day of . . . . . two thousand and . . . . . , and from thenceforth next ensuing and fully to be completed and ended.

Yielding and paying therefor yearly and every year during the said term hereby granted unto the said party (*or parties*) of the first part, that party's (*or those parties'*) heirs, executors, administrators or assigns, the sum of . . . . . to be payable on the following days and times, that is to say (on, *etc.*), the first of such payments to become due and be made on the . . . . . day of . . . . . next.

R.S., c. 97, Sch. B.

SCHEDULE C

Form of Mortgage

This Indenture, made the . . . . . day of . . . . . two thousand and . . . . . , in pursuance of Part I of the *Conveyancing Act*.

Between (*here insert names of parties, and recitals if any*)

Witnesseth, that in consideration of . . . . . of lawful money of Canada now paid by the said mortgagee (*or mortgagees*) to the said mortgagor (*or mortgagors*), the receipt whereof is hereby acknowledged, the said mortgagor (*or mortgagors*) do grant and mortgage unto the mortgagee (*or mortgagees*), the mortgagee's (*or mortgagees'*) heirs, executors, administrators and assigns forever, all (parcels) (*insert provisoes, covenants or other provisions*).

In witness whereof the said parties hereto have hereunto set their hands and seals.

R.S., c. 97, Sch. C.

SCHEDULE D

Form of Covenants: Deed

COLUMN ONE

COLUMN TWO

1. The said (*covenantor*) covenants with the said (*covenantee*).

2. That the covenantor has the right to convey the said lands to the said (*covenantee*) notwithstanding any act of the said (*covenantor*).

3. And that the said (*covenantee*) shall have quiet possession of the said lands.

1. And the said covenantor doth hereby, for himself, his heirs, executors and administrators, covenant, promise and agree with and to the said covenantee, his heirs, executors, administrators and assigns, in manner following, that is to say:

2. That for and notwithstanding any act, deed, matter or thing by the said covenantor done, executed, committed, or knowingly or wilfully permitted or suffered to the contrary, he, the said covenantor, now hath in himself good right, full power and absolute authority to convey the said lands and other the premises hereby conveyed, or intended so to be, with their and every of their appurtenances unto the said covenantee in manner aforesaid, and according to the true intent of these presents.

3. And that it shall be lawful for the said covenantee, his heirs, executors, administrators and assigns, from time to time and at all times hereafter, peaceably and quietly to enter upon, have, hold, occupy, possess and enjoy the said land and premises hereby conveyed, or intended so to be, with their and every of their appurtenances; and to have, receive and take the rents, issues and profits thereof, and of every part thereof, to and for his and their use and benefit, without any let, suit, trouble, denial, eviction, interruption, claim or demand whatsoever of, from or by him, the said covenantor, or his heirs, or any person claiming, or to claim by, from, under or in trust for him, them or any of them.

4. Free from all encumbrances.
4. And that free and clear, and freely and absolutely acquitted, exonerated and forever discharged, or otherwise by the said covenantor or his heirs, well and sufficiently saved, kept harmless and indemnified of, from and against any and every former and other gift, grant, bargain, sale, jointure, dower, use, trust, entail, will, statute, recognizance, judgment, execution, extent, rent, annuity, forfeiture, re-entry, and any and every other estate, title, charge, trouble and encumbrance whatsoever, made, executed, occasioned or suffered by the said covenantor or his heirs, or by any person claiming, or to claim, by, from, under or in trust for him, them or any of them.
5. And the said (*covenantor*) covenants with the said (*covenantee*) that the covenantor will execute such further assurances of the said lands as may be requisite.
5. And the said covenantor doth hereby, for himself, his heirs, executors and administrators, covenant, promise, and agree with and to the said covenantee, his heirs, executors, administrators and assigns, that he the said covenantor, his heirs, executors and administrators, and all and every other person whosoever having or claiming, or who shall or may hereafter have or claim, any estate, right, title or interest whatsoever in, to or out of the said lands and premises hereby conveyed, or intended so to be, or any of them, or any part thereof, by, from, under or in trust for him, them or any of them, shall and will, from time to time and at all times hereafter, upon every reasonable request, and at the costs and charges of the said covenantee, his heirs, executors, administrators or assigns, make, do, execute, or cause to be made, done or executed, all such further and other lawful acts, deeds, things, devices, conveyances and assurances in the law, whatsoever, for the better, more perfectly and absolutely conveying and assuring the said lands and premises hereby conveyed or intended so to be, and every part thereof, with their appurtenances, unto the covenantee, his heirs, executors, administrators and assigns, in manner aforesaid, as by the said covenantee, his heirs, executors, administrators and assigns, his or their counsel in the law, shall be reasonably devised, advised or required, so as no such further assurances contain or imply any further or other covenant or warranty than against the acts and deeds of the person who shall be required to make or execute the same, and his heirs, executors or administrators only, and so as no person who shall be required to make or execute such assurances shall be compellable for the making or executing thereof, to go or travel from his usual place of abode.
6. And the said (*covenantor*) covenants with the said (*covenantee*) that the covenantor has done no act to encumber the said lands.
6. And the said covenantor, for himself, his heirs, executors and administrators doth hereby covenant, promise and agree, with and to the said covenantee, his heirs, executors, administrators and assigns, that he hath not at any time heretofore made, suffered any act, deed, matter or thing whatsoever whereby or by means whereof the said lands and premises hereby conveyed or intended so to be, or any part or parcel thereof are, is or shall or may be in any wise impeached, charged, affected or encumbered in title, estate or otherwise howsoever done, committed, executed, or wilfully or knowingly suffered any act, deed, matter or thing whatsoever whereby or by means whereof the said lands and premises hereby conveyed or intended so to be,

or any part or parcel thereof are, is or shall or may be in any wise impeached, charged, affected or encumbered in title, estate or otherwise howsoever.

7. And the said (*releasor*) releases to the said (*releasee*) all the releasor's claims upon the said lands.

7. And the said releasor hath released, remised and forever quitted claim, and by these presents doth release, remise and forever quit claim unto the said releasee, his heirs, executors, administrators and assigns, all and all manner of right, title, interest, claim and demand whatsoever, in, to and out of the said lands and premises hereby granted, or intended so to be, and every part and parcel thereof, so as that neither he nor his heirs, executors, administrators or assigns shall nor may, at any time hereafter, have, claim, pretend to, challenge or demand the said lands and premises or any part thereof, in any manner howsoever, but the said releasee, his heirs, executors, administrators and assigns, and the same lands and premises shall from henceforth forever hereafter be exonerated and discharged of and from all claims and demands whatsoever which the said releasor might or could have upon him in respect of the said lands, or upon the said lands.

R.S., c. 97, Sch. D.

#### SCHEDULE E

##### Forms of Covenants in Lease

###### COLUMN ONE

1. The said (*lessee*) covenants with the said (*lessor*) to pay rent.

2. And to pay taxes except for local improvements.

3. And to repair, reasonable wear and tear and damage by fire, lightning and tempest only excepted.

4. And to keep up fences.

###### COLUMN TWO

1. And the said lessee doth hereby for himself, his heirs, executors, administrators and assigns, covenant with the said lessor that he, the said lessee, his executors, administrators and assigns, will, during the said term, pay unto the said lessor the rent hereby reserved in manner hereinbefore mentioned, without any deduction whatsoever.

2. And also will pay all taxes, rates, duties and assessments, whatsoever, whether municipal, parliamentary or otherwise, now charged or hereafter to be charged upon the said demised premises, or upon the said lessor on account thereof, except municipal taxes for local improvements or works assessed upon the property benefited thereby.

3. And also will, during the said term, well and sufficiently repair, maintain, amend and keep the said demised premises with the appurtenances in good and substantial repair, and all fixtures and things thereto belonging, or which at any time during the said term shall be erected and made by the lessor, when, where, and so often as need shall be, reasonable wear and tear and damage by fire, lightning and tempest only excepted.

4. And also will, from time to time during the said term, keep up the fences and walls of or belonging to said premises, and make anew any parts thereof that may require to be new made in a good and husband-like manner and at proper seasons of the year.

5. And not to cut down timber.

6. And that the said (*lessor*) may enter and view state of repair, and that the said (*lessee*) will repair according to notice in writing, reasonable wear and tear, and damage by fire, lightning and tempest only excepted.

7. And will not assign or sublet without leave.

8. And that the lessee will leave the premises in good repair, reasonable wear and tear and damage by fire, lightning and tempest only excepted.

9. Provided that the lessee may remove the lessee's fixtures.

10. Provided, that in the event of fire, lightning or tempest, rent shall cease until the premises are rebuilt.

5. And also will not at any time during the said term, hew, fell, cut down or destroy, or cause or knowingly permit or suffer to be hewed, felled, cut down or destroyed, without the consent in writing of the lessor, any timber or timber trees, except for necessary repairs, or firewood, or for the purpose of clearance as herein set forth.

6. And it is hereby agreed that it shall be lawful for the lessor and his agents, at all reasonable times during the said term, to enter the said demised premises to examine the condition thereof; and further, that all want of reparation, that upon such view shall be found, and for the amendment of which notice in writing shall be left at the premises, the said lessee, his executors, administrators and assigns, will within three calendar months next after such notice, well and sufficiently repair and make, damage by fire, lightning and tempest only excepted.

7. And also that the lessee, his executors, administrators and assigns, shall not, nor will during the said term, assign, transfer or set over or otherwise by any act or deed procure the said premises or any of them to be assigned, transferred set over or sublet unto any person or persons whomsoever, without the consent in writing of the lessor, his heirs, or assigns first had and obtained.

8. And further, the lessee will, at the expiration, or other sooner determination of the said term, peaceably surrender and yield up unto the said lessor, the said premises hereby demised, with the appurtenances, together with all buildings, erections and fixtures erected or made by the lessor thereon, in good and substantial repair and condition, reasonable wear and tear, and damage by fire, lightning and tempest only excepted.

9. Provided, always, and it is hereby expressly agreed, that the lessee may at or prior to the expiration of the term hereby granted, take, remove and carry away from the premises hereby demised all fixtures, fittings, plant, machinery, utensils, shelving, counters, safes or other articles upon the said premises in the nature of trade or tenants' fixtures or other articles belonging to or brought upon the said premises by the said lessee but the lessee shall in such removal do no damage to the said premises, or shall make good any damage which he may occasion thereto.

10. Provided, and it is hereby declared and agreed, that in case the premises hereby demised or any part thereof shall at any time during the term hereby agreed upon be burned down or damaged by fire, lightning or tempest so as to render the same unfit for the purposes of the said lessee, then and so often as to render the same unfit for the purposes of the said lessee, then and so often as the same shall happen, the rent hereby reserved, or a proportionate part thereof, according to the nature and extent of the injuries sustained, shall abate, and all or any remedies for recovery of said rent or such proportionate part thereof shall be suspended until the said premises shall have been rebuilt or made fit for the purposes of the said lessee.

11. Proviso for re-entry by the said (*lessor*) on non-payment of rent or non-performance of covenants.

11. Provided always, and it is hereby expressly agreed, that if and whenever the rent hereby reserved or any part thereof shall be unpaid for fifteen days after any of the days on which the same ought to have been paid, although no formal demand shall have been made therefor, or in case of the breach or non-performance of any of the covenants or agreements herein contained on the part of the lessee, his executors, administrators or assigns, then, and in either of such cases, it shall be lawful for the lessor at any time hereafter, into and upon the said demised premises or any part thereof, in the name of the whole, to re-enter, and the same to have again, repossess and enjoy, as of his or their former estate, anything hereinafter contained to the contrary notwithstanding.

12. The said (*lessor*) covenants with the said (*lessee*) for quiet enjoyment.

12. And the lessor doth hereby for himself, his heirs, executors, administrators and assigns, covenant with the lessee, his executors, administrators and assigns, that he and they paying the rent hereby reserved and performing the covenants hereinbefore on his and their part contained, shall and may peaceably possess and enjoy the said demised premises for the term hereby granted, without any interruption or disturbance from the lessor, his heirs, executors, administrators and assigns, or any other person or persons lawfully claiming by, from or under him, them or any of them.

R.S., c. 97, Sch. E.

#### SCHEDULE F

##### Forms of Covenants in Mortgage

###### COLUMN ONE

1. This mortgage is void on payment of (*amount of principal money*) of lawful money of Canada, with interest at (*rate of interest*) per cent as follows: (*terms of payment of principal and interest*) and taxes and performance of statute labour.

###### COLUMN TWO

1. Provided always, and these presents are upon this express condition, that if the said mortgagor, his heirs, executors, administrators or assigns, or any of them, do and shall well and truly pay or cause to be paid unto the said mortgagee, his executors, administrators or assigns, the just and full sum of (*amount of principal money*) of lawful money of Canada, with interest thereon, at the rate of (*rate of interest per cent per annum*), on the days and times and in manner following, that is to say: (*terms of payment of principal and interest*) without any deduction, defalcation or abatement out of the same for or in respect of any taxes, rates, levies, charges, rents, assessments, statute labour or other impositions whatsoever already rated, charged, assessed or imposed, or hereafter to be rated, charged, assessed or imposed by authority of Parliament or of the Legislature, or otherwise howsoever, on the said lands and tenements, hereditaments and premises, with the appurtenances, or on the said mortgagee, his heirs, executors, administrators or assigns, in respect of the said premises or of the said money or interest, or any other matter or thing relating to these presents, and until such default as aforesaid shall and will well and truly pay, do and perform or cause or procure to be paid, done and performed, all matters and things in this proviso hereinbefore set forth, then

these presents and everything in the same contained shall be absolutely null and void.

2. The said mortgagor covenants with the said mortgagee.
  2. And the said mortgagor doth hereby for himself, his heirs, executors and administrators, covenant, promise and agree to and with the said mortgagee, his heirs, executors, administrators and assigns, in manner following, that is to say:
3. That the mortgagor will pay the mortgage money and interest and observe the above proviso.
  3. That the said mortgagor, his heirs, executors, administrators or some or one of them, shall and will well and truly pay or cause to be paid unto the said mortgagee, his heirs, executors, administrators or assigns, the said sum of money in the above proviso mentioned, with interest for the same as aforesaid, at the days and times and in the manner above limited for payment thereof, and shall and will in everything well, faithfully and truly do, observe, perform, fulfil and keep all and singular the provisions, agreements and stipulations in the said above proviso particularly set forth, according to the true intent and meaning of these presents, and of the said above proviso.
4. That the mortgagor has a good title in fee simple to the said lands.
  4. And also, that the said mortgagor, at the time of the sealing and delivery hereof, is and stands solely, rightfully and lawfully seized of a good, sure, perfect, absolute and indefeasible estate of inheritance in fee simple, of and in the lands, tenements, hereditaments and all and singular other the premises hereinbefore described, with their and every of their appurtenances, and of and in every part and parcel thereof, without any manner of trusts, reservations, limitations, provisos or conditions, except those contained in the original grant thereof from the Crown, of any other matter or thing to alter, charge, change, encumber or defeat the same.
5. And that the mortgagor has the right to convey the said lands to the said mortgagee.
  5. And also, that the said mortgagor now hath in himself good right, full power and lawful and absolute authority to convey the said lands, tenements, hereditaments and all and singular other the premises hereby conveyed or hereinbefore mentioned or intended so to be, with their and every of their appurtenances, unto the said mortgagee, his heirs, executors, administrators and assigns, in manner aforesaid, and according to the true intent and meaning of these presents.
6. And that on default, the mortgagee shall have quiet possession of the said lands.
  6. And also, that from and after default shall happen to be made of or in the payment of the said sum of money in the said above proviso mentioned, or the interest thereof, or any part thereof, or of or in the doing, observing, performing, fulfilling or keeping of some one or more of the provisions, agreements or stipulations in the said above proviso particularly set forth, contrary to the true intent and meaning of these presents, and of the said proviso, then, and in every such case, it shall and may be lawful to and for the said mortgagee, his heirs, executors, administrators and assigns, peaceably and quietly to enter into, have, hold, use, occupy, possess and enjoy the aforesaid lands, tenements, hereditaments and premises hereby conveyed or mentioned or intended so to be, with their appurtenances, without the let, suit, hindrance, interruption or denial of

him, the said mortgagor, his heirs or assigns, or any other person or persons whomsoever.

7. Free from all encumbrances.

7. And that free and clear and freely and clearly acquitted, exonerated and discharged of and from all arrears of taxes and assessments whatsoever due or payable upon or in respect of the said lands, tenements, hereditaments and premises or any part thereof, and of and from all former conveyances, mortgages, rights, annuities, debts, judgments, executions and recognizances, and of and from all manner of other charges or encumbrances whatsoever.

8. And that the said mortgagor will execute such further assurances of the said lands as may be required.

8. And also, that from and after default shall happen to be made of or in the payment of the said sum of money in the said proviso mentioned, or the interest thereof, or any part of such money or interest, or of or in the doing, observing, performing, fulfilling or keeping of some one or more of the provisions, agreements or stipulations in the said above proviso particularly set forth, contrary to the true intent and meaning of these presents, and of the said proviso, then and in every such case the said mortgagor, his heirs and assigns, and all and every other person or persons whatsoever having or lawfully claiming, or who shall or may have or lawfully claim any estate, right, title, interest or trust, of, in, to or out of the lands, tenements, hereditaments and premises hereby conveyed or mentioned or intended so to be, with the appurtenances or any part thereof, by, from, under or in trust for him the said mortgagor, shall and will from time to time, and at all times thereafter, at the proper costs and charges of the said mortgagee, his heirs, executors, administrators and assigns, make, do, suffer and execute, or cause or procure to be made, done, suffered and executed, all and every such further and other reasonable act or acts, deed or deeds, devices, conveyances and assurances in the law for the further, better and more perfectly conveying and assuring the said lands, tenements, hereditaments and appurtenances, unto the said mortgagee, his heirs, executors, administrators and assigns, as by the said mortgagee, his heirs and assigns, or his or their counsel learned in the law, shall or may be lawfully and reasonably devised, advised or required, so as no person who shall be required to make or execute such assurances shall be compelled, for the making or execution thereof, to go or travel from his usual place of abode.

9. And that the said mortgagor has done no act to encumber the said lands.

9. And also that the said mortgagor hath not at any time heretofore made, done, committed, executed or wilfully or knowingly suffered any act, deed, matter or thing whatsoever whereby or by means whereof the said lands, tenements, hereditaments and premises hereby conveyed or mentioned or intended so to be, or any part or parcel thereof, are, is or shall or may be in any wise impeached, charged, affected or encumbered in title, estate or otherwise howsoever.

10. And that the said mortgagor will insure the buildings on the said lands to the amount of not less than . . . . . dollars.

10. And also that the said mortgagor or his heirs shall and will forthwith insure, unless already insured, and during the continuance of this security keep insured against loss or damage by fire, in such proportions upon each building as may be required by the said mortgagee, his heirs, execu-

tors, administrators or assigns, the messuages and buildings erected on the said lands, tenements, hereditaments and premises hereby conveyed or mentioned or intended so to be, in the sum of . . . . . of lawful money of Canada, at the least, in some insurance office to be approved of by the said mortgagee, his heirs, executors, administrators or assigns, and pay all premiums and sums of money necessary for such purpose as the same shall become due, and will on demand assign, transfer and deliver over unto the said mortgagee, the mortgagee's heirs, executors, administrators or assigns, the policy or policies of assurance, receipt or receipts thereto appertaining; and if the said mortgagee, his heirs, executors, administrators or assigns, shall pay any premiums or sums of money for insurance of the said premises or any part thereof, the amount of such payment shall be added to the debt hereby secured, and shall bear interest at the same rate from the time of such payments, and shall be payable at the time appointed for the then next ensuing payment of interest on the said debt.

11. And the said mortgagor releases to the said mortgagee all the mortgagor's claims upon the said lands, subject to the said proviso.

11. And the said mortgagor hath released, remised and forever quitted claim, and by these presents doth release, remise and forever quit claim unto the said mortgagee, his heirs, executors, administrators and assigns, all and all manner of right, title, interest, claim and demand whatsoever, of, unto and out of the said lands, tenements, hereditaments and premises hereby conveyed, or mentioned or intended so to be, and every part and parcel thereof, so that neither the said mortgagor, his heirs, executors, administrators or assigns, and the said lands, tenements, hereditaments and premises, subject as aforesaid, shall from henceforth forever hereafter be exonerated and discharged of and from all claims and demands whatsoever which the said mortgagor, his heirs or assigns, might or could have upon the said mortgagee, his heirs, executors, administrators or assigns, in respect of the said lands, tenements, hereditaments and premises, or upon the said lands, tenements, hereditaments and premises.

12. Provided that the mortgagee may distrain for arrears of interest.

12. And it is further covenanted, declared and agreed by and between the parties to these presents, that if the said mortgagor, his heirs, executors or administrators, shall make default in payment of any part of the said interest at any of the days or times hereinbefore limited for the payment thereof, it shall and may be lawful for the said mortgagee, his heirs, executors, administrators or assigns, to distrain therefor upon the said lands, tenements, hereditaments and premises, or any part thereof, and, by distress warrant, to recover by way of rent reserved, as in the case of a demise, of the said lands, tenements, hereditaments and premises, so much of such interest as shall, from time to time, be or remain in arrear and unpaid, together with all costs, charges and expenses attending such levy or distress as in like cases of distress for rent.

13. Provided that in default of the payment of the interest hereby secured, the principal hereby secured becomes payable.

14. Provided that until default of payment the mortgagor shall have quiet possession of the said lands.

13. Provided always, and it is hereby further expressly declared and agreed by and between the parties to these presents, that if any default shall at any time happen to be made of or in the payment of the interest money hereby secured or mentioned or intended so to be any part thereof, then and in such case the principal money hereby secured or mentioned or intended so to be, and every part thereof, shall forthwith become due and payable in like manner and with like consequences and effects, to all intents and purposes whatsoever, as if the time herein mentioned for payment of such principal money had fully come and expired, but that in such case the said mortgagor, his heirs, or assigns, shall on payment of all arrears under these presents, with lawful costs and charges in that behalf at any time before any judgment in the premises recovered, or within such time as, by the practice of the Supreme Court, relief therein could be obtained, be relieved from the consequences of non-payment of so much of the money secured by these presents or mentioned, or intended so to be, as may not then have become payable by reason of lapse of time.

14. And provided also, and it is hereby further expressly declared and agreed by and between the parties to these presents, that until default shall happen to be made of or in the payment of the said sum of money hereby secured or mentioned, or intended so to be, or the interest thereof, or any part of either of the same, or the doing, observing, performing, fulfilling or keeping some one or more of the provisions, agreements or stipulations herein set forth, contrary to the true intent and meaning of these presents, it shall and may be lawful to and for the said mortgagor, his heirs and assigns, peaceably and quietly to have, hold, use, occupy, possess and enjoy the said lands, tenements, hereditaments and premises hereby conveyed or mentioned, or intended so to be, with their and every of their appurtenances, and to receive and take the rents, issues and profits thereof to his own use and benefit, without let, suit, hindrance, interruption or denial of or by the said mortgagee, his heirs, executors, administrators or assigns, or of or by any other person or persons whomsoever, lawfully claiming, or who shall, or may lawfully claim by, from, under or in trust for him, her, them or any or either of them.

R.S., c. 97, Sch. F.

## SCHEDULE G

### Directions as to Forms in the Schedules

1. Parties who use any of the forms in the first column of Schedules D, E or F may substitute for the words "covenantor" or "covenantee", "releasor" or "releasee", "grantor" or "grantee", "lessor" or "lessee" or "mortgagor" or "mortgagee" any name or other designation, and in every such case corresponding substitutions must be taken to be made in the corresponding forms in the second column of said Schedule.

2. Such parties may substitute the plural number for the singular in any of the forms in the first column of said Schedules, and corresponding changes must be taken to be made in the corresponding forms in the second column.

3. Such parties may introduce into, or annex to, any of the forms in the first column of said Schedules any express exceptions from, or other express qualifications thereof respectively, and the like exceptions or qualifications must be taken to be made from or in the corresponding forms in the second column.

4. Such parties may add the name or other designation of any person or persons, or class or classes of persons, or any other words, at the end of form two of the first column of Schedule D, so as thereby to extend the words thereof to the acts of any additional person or persons, or class or classes of persons, or of all persons whomsoever; and in every such case the covenants two, three and four of said Schedule D, or of such of them as may be employed in such deed, must be taken to extend to the acts of the person or persons, class or classes of persons, so named.

5. Where the premises demised are of freehold tenure, the covenants 1 to 8 in Schedule E must be taken to be made with, and the proviso 11 to apply to, the heirs and assigns of the lessor, and where the premises demised are of leasehold tenure, the said covenants and proviso must be taken to be made with and apply to the lessor, the lessor's executors, administrators and assigns.

6. Where the word "lessor" occurs in the second column of Schedule E, it must be held to include the heirs and assigns of the lessor, if the premises demised are of freehold tenure, and to include the heirs, executors, administrators and assigns of the lessor, if such premises are of leasehold tenure, and where the word "lessee" occurs in the said second column it must be held to include the executors, administrators and assigns of the lessee.

R.S., c. 97, Sch. G.

## PART II

### Purpose of Part

9 The purpose of this Part is to permit simpler conveyances and conveyancing but not to restrict conveyancing to the forms and methods herein set out. R.S., c. 97, s. 9.

### Interpretation of Part

- 10 In this Part, unless the context otherwise requires,
- “convey” means create a property right or change it between persons;
  - “conveyance” means an instrument that expresses an intention to convey thereby a property right;
  - “property right” means any right or power in respect to any kind of property, including things in action;
  - “representatives” means heirs, executors and administrators or, in the case of corporations, successors, and refers to the real or personal representatives, or both, as the nature of the property right requires. R.S., c. 97, s. 9.

**Effective conveyance**

**11 (1)** A conveyance that identifies the parties and property, and specifies the property right to be conveyed, and that is validly executed, is effective to convey that property right.

**(2)** A conveyance does not require a *habendum* or any special form of words, terms of art or words of limitation.

**(3)** Feoffment and livery of seisin are abolished.

**(4)** Every property right may be granted, released, assigned or surrendered, whether or not the grantee, releasee, assignee or surrenderor has any possession of the property conveyed or has made any entry. R.S., c. 97, s. 10.

**Conveyance to be read as a whole and effectiveness of instrument**

**12 (1)** A conveyance must be read as a whole and, where it contains contradictory provisions, the later provisions are effective.

**(2)** An instrument that is not effective to convey may yet be effective as an agreement to convey or as evidence thereof. R.S., c. 97, s. 11.

**Valid execution of instrument**

**13** Except in the classes of conveyances where an enactment prescribes the mode of execution and in addition to any other mode now in use, a conveyance is validly executed if

**(a)** it is signed by the party who conveys or some other person in the party's presence by the party's direction, or by the party's attorney;

**(b)** where the *Land Registration Act* does not apply, it is sealed by the party who conveys or some other person by the party's direction, or it is given for good or valuable consideration; and

**(c)** it is delivered or, in the case of a deed poll, published and declared. R.S., c. 97, s. 12; 2001, c. 6, s. 101.

**Electronic submission of information and documents**

**14 (1)** Where the *Land Registration Act* applies, the electronic submission of information and documents in accordance with the regulations prescribed by the Minister of Service Nova Scotia has the same effect as the registration or recording of the documents in original form that are represented by the electronically submitted information, without the necessity of registering or recording the documents themselves.

**(2)** The Minister of Service Nova Scotia may make regulations for the purpose of subsection (1).

**(3)** The exercise by the Minister of Service Nova Scotia of the authority contained in subsection (2) is a regulation within the meaning of the *Regulations Act*. 2005, c. 8, s. 6.

**Presumptions underlying conveyance**

- 15** Except where a contrary intention appears by the conveyance,
- (a) where words of limitation are not used, the conveyance conveys the whole property right that the party conveying had power to dispose of by the conveyance, including, in the case of real property, the fee simple;
  - (b) where a consideration is stated therein, it is presumed to have been given at or before the execution of the conveyance, until the contrary is proved;
  - (c) the parties are deemed to agree that it enures to the benefit of, and binds, them and their respective representatives and assigns;
  - (d) a conveyance of any property right in land includes the buildings, easements, tenements, hereditaments and appurtenances belonging or in any way appertaining to that property right. R.S., c. 97, s. 13.

**Interpretation of words in conveyance**

- 16 (1)** In a conveyance, unless the context otherwise requires, the verbs
- “bargain and sell” or “bargain, sell” mean convey for a consideration;
  - “give”, “grant”, “set over” and “transfer” are equivalent expressions;
  - “demise” and “lease” are equivalent expressions in chattel conveyances as also are “lease” and “let to hire”;
  - “mortgage” means convey by way of mortgage;
  - “quit claim to”, “release” and “surrender” are equivalent expressions.
- (2)** Except where an enactment expressly provides otherwise, no covenants or conditions are implied in any conveyance, or by the use therein of the words “demise”, “give”, “grant” or other terms of art, or by the mode of conveying, such as partition or exchange. R.S., c. 97, s. 14.

**Compliance with agreement to convey**

- 17 (1)** Where any agreement to sell, mortgage, lease or otherwise convey requires the conveyance to be in the common or usual form or with the ordinary, customary or usual covenants, an appropriate conveyance drawn in accordance with this Part or with the examples of conveyances or covenants and provisions in the Schedules to this Part is sufficient compliance with the agreement.
- (2)** Except where it otherwise appears from the agreement, where any agreement to convey requires the conveyance to be by a “warranty deed”, a conveyance containing the covenants for quiet enjoyment, good title, right to convey, freedom from encumbrances and further assurances, as set out in Column One of Schedule B to this Part is sufficient compliance with the agreement. R.S., c. 97, s. 15.

**Forms or form of words equally effective**

**18** Deeds, mortgages, leases and other conveyances may be made effectively in the forms respectively ascribed thereto in Schedule A to this Part, but any forms of words that express the conveyances in question are equally effective. R.S., c. 97, s. 16.

**Deemed to contain corresponding expression**

**19** Where a conveyance contains an expression set out in Column One of that one of Schedules B and C to this Part that is ascribed to the class of conveyances in question, it is deemed to contain the expression in Column Two that bears the same number as the expression in Column One, but the number need not be inserted. R.S., c. 97, s. 17.

## SCHEDULE A

The forms given in this Schedule are not to be deemed to be prescribed, nor are they intended to give any special force to the words or phrases used or to the order of the provisions. They are merely three of an indefinite number of possible forms and are provided as examples to suggest that conveyances need not be restricted in form and that the freedom of the conveyancer is limited only by the need to be intelligible and the requirements as to execution. Index numbers and notes are not parts of the forms. The words in bold type are explanatory.

**Form 1 - A General Form of Conveyance**

This Conveyance<sup>1</sup> made the 29th<sup>2</sup> day of October, A.D. 1953<sup>2</sup>

between<sup>3</sup> John Doe of Halifax in the County of Halifax, and John Doe's spouse, Mary Doe, also of Halifax, hereinafter called the "Conveyors"<sup>4</sup>

of the One Part,

and Richard Roe of Halifax aforesaid, Accountant, and Ferdinand Foe of Sydney in the County of Cape Breton, Merchant, hereinafter called the "Conveyees"<sup>4</sup>

of the Other Part,

witnesseth that,<sup>5</sup>

Whereas<sup>6</sup> the conveyer, John Doe, is one of the heirs at law of Jeremiah Doe, who died intestate at Halifax aforesaid on January 3, 1953, entitled to an estate in fee simple in the lands hereinafter described:

In consideration of<sup>7</sup> the premises and One Dollar of lawful money of Canada, which has been received by the Conveyors from the Conveyees, and other good and valuable consideration.

The Conveyors hereby convey<sup>8</sup> to the Conveyees as joint tenants<sup>9</sup> the undivided interest of the Conveyors<sup>10</sup> in all the lands<sup>11</sup> conveyed to Jeremiah Doe by Ronald Roe by deed dated September 8, 1890, registered in the Halifax Registry of Deeds in Book 329 at page 1110,

Excepting thereout<sup>12</sup> the lot of land conveyed by John Doe to Mary Doe by deed dated May 15, 1920, registered in the Halifax Registry of Deeds in Book 581 at page 3,

Reserving<sup>12</sup> to the Conveyors the right to pasture any number of cattle at all times in the field described in the Schedule hereto; subject to the exceptions and reservations, the lands are conveyed

For<sup>13</sup> the lifetime of Julia Doe, child of the Conveyors,

In trust<sup>14</sup> for the use of Julia Doe as a dwelling house for Julia Doe and Julia Doe's family,

On this condition that if Julia Doe marries Richard Roe, the Conveyee, this conveyance is void,

Provided that<sup>15</sup> the condition stated above shall not apply and the lands conveyed shall vest in Julia Doe for Julia Doe's own use forever if the other heirs or devisees of Jeremiah Doe convey their interests in the lands to Julia Doe.

And the Conveyor, John Doe, covenants<sup>16</sup> with the Conveyees that John Doe has not done or permitted anything to encumber the lands.

Schedule

*(here the description of the field in which the right of pasturage was reserved is set out)*

In witness whereof the Conveyors have set their hands and seals.<sup>17</sup>

**Form 2 - Another General Form of Conveyance**

By<sup>18</sup> this deed<sup>1</sup> John Doe of Halifax in the County of Halifax, Merchant, and John Doe's spouse, Mary Doe, also of Halifax (hereinafter called the "Grantors"<sup>4</sup>)

convey<sup>8</sup> to Richard Roe, also of Halifax, Seaman, (hereinafter called the "Grantee"<sup>4 9 10</sup>)

the lands described in the Schedule<sup>11</sup>, in consideration of<sup>5</sup> one dollar of lawful money of Canada which the Grantee has paid and other good and valuable consideration.

<sup>13</sup>We covenant with the Grantee that we have not done or permitted anything to encumber the lands.

Schedule

*(description of lands conveyed)*

In witness whereof we have subscribed our signatures and set our seals this 29th<sup>2</sup> day of October, A.D. 1953<sup>2 17</sup>

**Form 3 - A Further General Form of Conveyance**

In this Indenture<sup>2</sup>

“Grantors”<sup>4</sup> means John Doe of 2771 Poe Avenue, Halifax, Nova Scotia, and John Doe’s spouse, Mary Doe, of the same place;

“Grantee”<sup>4</sup> means Richard Roe, of 61 Soe Street, Halifax, Nova Scotia, Constable.<sup>19</sup>

<sup>6</sup>In consideration of \$2,000 which the Grantee has paid to the Grantors<sup>5</sup>, the Grantors hereby convey<sup>8</sup> to the Grantee the following lands:

*(here descriptions, exceptions, reservations, limitations and other provisions might follow in any convenient order)*

Signed and sealed the 29th<sup>2</sup> day of October, 1953<sup>2</sup>.

**Notes to Schedule A**

1. It is not necessary to designate a conveyance, but if it is convenient to do so, it might be designated by any convenient name, general or specific: e.g. “Conveyance,” “Deed,” “Instrument,” “Document,” “Indenture,” “Assurance,” or “Warranty Deed,” “Release,” “Assignment,” “Surrender,” “Mortgage,” “Chattel Mortgage,” “Bill of Sale,” or the like.

2. The date may be expressed in figures or in words and at any convenient place in the conveyance. Any numeral may be expressed in figures or in words, and any intelligible abbreviation or symbol may be used.

3. Where the parties are assigned to parts, as many parts as are convenient may be used.

4. It is not necessary to designate the parties but if it is convenient to do so any convenient terms might be used: e.g. “Grantor,” “Grantee,” “Assignor,” “Assignee,” “Mortgagor,” “Mortgagee” or the like.

5. It is not necessary to use a testatum and, if used, it may be repeated as often as desired. The device might be avoided by breaking up the text of the conveyance into separate sentences and clauses. For example it might begin thus:

“This conveyance is made the 29th day of October, 1953, between . . . . .  
& c”

6. Recitals, where used, might precede the text of the conveyance or be inserted in any convenient place.

7. Where the consideration is expressed, any suitable words may be used.

8. Any words that express the intention to convey, whether generally or in a specific manner, are sufficient, and it is not necessary to specify the manner of conveying. For example, “convey,” “grant” or the like, or “release,” “bargain and sell,” “mortgage” or the like, might be used.

9. Where conveyees take as joint tenants or tenants in common, and it is not intended to rely on any presumption, it might be stated conveniently in this place or with the words of limitation, if any, or elsewhere, if desired.

10. Here, the extent of the interest of the conveyor may be described, if desired, but it might be described in any other place, as, for example, in a recital, or it may be left not described.

11. Whatever is conveyed might be described here, or in any convenient place, as, for example, in a schedule, or it might be incorporated by reference to some matter of public record.

12. Descriptions of any portions of the property excepted from the conveyance and reservations of rights, privileges, rents or the like may conveniently follow the description of the property conveyed, whether in the body of the conveyance or in a schedule, or may be inserted in any convenient order in any convenient place. The limitation of the term and the reservation of rent in a lease might, for example, be inserted here, as follows:

“For the term of one year certain commencing on November 1, 1953, and ending on October 31, 1954, at the rent reserved of \$1200.00 to be paid in equal monthly instalments of \$100.00 on or before the first day of each month during the term, beginning on November 1, 1953.”

13. Releases, limitations, restrictions, trusts, conditions, provisos, covenants and other provisions may follow here in any convenient order or might be inserted in any convenient place.

14. The provisions commonly contained in a chattel mortgage might be expressed thus:

“In trust, on breach of any of the provisions of this mortgage, to sell the same at public auction or by private contract and out of the proceeds to pay all expenses of the sale and then to retain to the Mortgagee any balance of the principal and interest hereby secured then unpaid and to render any surplus to the Mortgagor,”

“On condition that this mortgage shall be void if the Mortgagor pays to the Mortgagee \$500 with interest thereon at the rate of 6% a year calculated half-yearly not in advance within 16 months from the date hereof to be paid in equal monthly instalments of consolidated principal and interest of \$25 each on the 29th day of each month hereafter until the principal and all interest have been paid,”

“Provided that until default herein the Mortgagor may keep and use the chattels.”

15. The provisions commonly made for repayment and avoidance in a mortgage of real property might be expressed thus:

“Provided that this Mortgage shall be void upon payment to the Mortgagee of \$5,000 with interest thereon at 5% a year calculated half-yearly not in advance, to be paid in 139 equal monthly instalments of consolidated principal and interest of \$50 each on the 29th day of each month hereafter until all the principal and interest has been paid.”

16. The covenants commonly contained in a “warranty deed” might be expressed thus:

“The Grantors covenant with the Grantee that the Grantee shall have quiet enjoyment of the lands, that the Grantors have a good title in fee simple to the lands and the right to convey them as hereby conveyed, that they are free from encum-

branches and that the Grantors will procure such further assurances as may be reasonably required.”

17. In the case of a corporation, execution might be expressed, for example, by the words:

“the proper officers of the Grantor have affixed its common seal and subscribed their hands”

or to the like effect.

18. Recitals, if used, might conveniently precede the opening words given here.

19. Other expressions, as, for example, “the lands,” might be defined here, if desired.

R.S., c. 97, Sch. A.

## SCHEDULE B

### PROVISIONS IN CONVEYANCES OF REAL PROPERTY

Words, letters and figures in bold type are explanatory or by way of example, and may be freely modified to suit the context. Suitable changes may be made in the case of gender, corporations and the plural number. Expressions inserted in, or added before or after, those in Column One shall be deemed to be inserted in or added before or after, the corresponding expressions in Column Two.

#### COLUMN ONE

1. **The releasor** hereby releases to **the releasee** all the releasor’s claims upon **the lands**

2. **The covenantor** covenants with **the covenantee**

3. **The grantee** shall have quiet enjoyment of **the lands**

4. **The grantor** has a good title in fee simple to **the lands**

#### COLUMN TWO

1. **The said releasor** hereby releases unto **the said releasee** all and all manner of right, title, interest, claim and demand whatsoever in, to or out of **the said lands and premises** hereby conveyed or intended so to be and every part and parcel thereof

2. **The said covenantor** doth hereby, for himself, his heirs, executors and administrators, covenant, promise and agree to and with **the said covenantee**, his heirs, executors, administrators and assigns, in manner following, that is to say

3. It shall be lawful for **the said grantee**, his heirs, executors, administrators and assigns, from time to time and at all times hereafter peaceably and quietly to enter into **the said lands and premises** and to have, hold, occupy, possess and enjoy the same without the lawful let, suit, hindrance, eviction, denial or disturbance of, from or by **the covenantor** or any person or persons whomsoever lawfully claiming or to claim the same

4. **The said grantor** hath a good, sure, perfect and indefeasible estate of inheritance in fee simple in **the said lands and premises**

5. **and** the right to convey **the lands** as hereby conveyed

6. notwithstanding any act of **the covenantor**

7. **The lands** are free from encumbrances

8. **The covenantor** will procure such further assurances as may be reasonably required

9. **The covenantor** has not done or permitted anything to encumber **the lands**

10. Provided that this **mortgage** is void upon payment to **the mortgagee of (here insert the amount and terms of payment)**

11. **The mortgagor** will pay the mortgage money and interest as aforesaid

12. On default **the mortgagee** may enter and have quiet enjoyment of **the lands**

5. **and** good right, full power and lawful authority to sell and convey **the said lands and premises** in manner and form as they are hereby sold and conveyed or mentioned and intended so to be

6. for and notwithstanding any act, deed, matter or thing by **the said covenantor** done, executed, committed or knowingly or wilfully permitted or suffered to the contrary

7. **The said lands** are free from encumbrances

8. **The said covenantor**, his heirs, executors and administrators, at the request and at the charges of **the covenantee**, his heirs, executors, administrators or assigns, shall and will from time to time and at all times hereafter execute, or cause to be executed such further and other acts, conveyances and assurances in the law for the better assuring to **the covenantee**, his heirs and assigns, of **the lands and premises hereby conveyed** in manner as above conveyed or mentioned and intended so to be as by **the covenantee**, his heirs, executors, administrators or assigns, or his or their counsel learned in the law shall be reasonably advised or required

9. **The said covenantor** hath not at any time heretofore done or suffered to be done anything whereby, or by means whereof, **the said lands and premises** hereby conveyed or intended so to be or any part or parcel thereof are, is, shall or may be in any wise impeached, charged, affected or encumbered in title, estate or otherwise howsoever

10. Provided always that if **the mortgagor**, his heirs, executors, administrators or assigns do well and truly pay unto **the said mortgagee**, his executors, administrators or assigns the said full sum of **(here insert the amount and terms of payment)** then these presents shall be void

11. **The said mortgagor**, his heirs, executors or administrators shall and will well and truly pay unto **the mortgagee**, his heirs, executors, administrators or assigns the said full sum of lawful money aforesaid and interest for the same at the days and times after the rate and in the manner mentioned in the foregoing proviso

12. After breach of the foregoing proviso it shall be lawful for **the said mortgagee**, his heirs, executors, administrators and assigns, from time to time and at all times thereafter peaceably and quietly to enter into **the said lands and premises** and to have, hold, occupy, possess and enjoy the same without the lawful let, suit, hindrance, eviction, denial or disturbance of, from or by **the mortgagor** or any person or persons whomsoever lawfully claiming or to claim the same

13. **The mortgagor** will insure the buildings on **the lands** against **fire** to the amount not less than . . . . . for the benefit of **the mortgagee**

13. Until payment shall be made of the principal sum and interest hereby secured to be paid to **the said mortgagee**, his heirs, executors, administrators and assigns, **the said mortgagor**, his heirs, executors, administrators and assigns, will keep without intermission insured against casualties by **fire** on the buildings on the said granted premises the sum of . . . . . dollars of lawful money of Canada in some good insurance office to be selected by and in the name and for the benefit of **the said mortgagee**, his executors, administrators and assigns, and will deposit with **the said mortgagee** or his nominee all policies and receipts for renewal premiums of such insurance

14. In default thereof **the mortgagee** may effect the insurance and charge it against the mortgage

14. In the default thereof, **the said mortgagee**, his heirs, executors, administrators and assigns may, as required, effect, renew and continue such insurance and charge all payments made for or in respect thereof with interest after the rate aforesaid upon the said mortgaged premises

15. **The Mortgagors** will pay all **taxes, rates and assessments** and show receipts on demand

15. **The said Mortgagors**, their and each of their heirs, executors, administrators or assigns, will pay promptly as the same become due and payable, all **taxes, rates and assessments** wherewith the said lands shall be rated or assessed during the currency of this **mortgage**; and upon demand will exhibit receipts therefor to **the Mortgagee**

16. **The Mortgagor** becomes a **yearly tenant of the Mortgagee** at the monthly rent of the payments aforesaid, but **the Mortgagee** is accountable for actual receipts only and after default may enter without notice

16. **The Mortgagor** doth attorn and become tenant **from year to year to the Mortgagee** from the date of the execution hereof at a **monthly** rental equivalent to, applicable in satisfaction of and payable at the same time as the monthly instalments hereinbefore provided to be paid, the legal relation of landlord and tenant being hereby constituted between **the Mortgagee** and **the Mortgagor**, but it is agreed that neither the existence of this clause, nor anything done by virtue thereof, shall render **the Mortgagee** a mortgagee in possession so as to be accountable for any moneys except those actually received; and **the Mortgagee** may, at any time after default hereunder, enter upon the mortgaged premises, or any part thereof, and determine the tenancy hereby created, without giving **the Mortgagor** any notice to quit

17. **The Mortgagor** will advance the taxes as estimated by **the Mortgagee** in equal monthly instalments from the **1st day of May, 1953** and will transmit all tax notices promptly and pay any balance on demand. **The Mortgagee** will pay the taxes, **quarterly** at least, unless **the Mortgagor** is in default

17. **The Mortgagee** shall estimate the amount of taxes payable in each year and **the Mortgagor** covenants and agrees to pay to **the Mortgagee** one twelfth of the estimated annual amount on the first day of each and every month during the term of this **Mortgage**, commencing with **the first day of May, 1953**. **The Mortgagee** agrees to apply such payments on the taxes chargeable against the said lands so long as **the Mortgagor** is not in default under any covenant or agreement contained in this **mortgage**, but nothing herein contained shall obligate **the Mortgagee** to apply such payments on account of taxes oftener than quarterly. Provided, however, that if **the Mortgagor** shall pay any sum or sums to **the Mortgagee** to apply on taxes, and if before the same shall have been applied there shall be default by **the Mortgagor** in respect to any payment of the principal or interest as herein provided, **the Mortgagee** may, at his option, apply such sum or sums in or towards

payment of the principal and/or interest in default. In the event that the taxes actually charged for any one year, together with any interest and penalties thereon exceed the estimated amount, **the Mortgagor** covenants and agrees to pay to **the Mortgagee** on demand the amount required to make up the deficiency. If **the Mortgagor** desires to take advantage of any discounts or avoid any penalties in connection with the payment of such taxes, he may pay to **the Mortgagee** such additional amounts as are required for that purpose. **The Mortgagor** further covenants and agrees to transmit to **the Mortgagee** the assessment notices, tax bills and other notices affecting the imposition of taxes forthwith after the receipt of same by him.

18. Where **the Mortgagor** defaults after any part of the principal has been advanced **the Mortgagee** may enter and complete, repair or manage the property

18. **The Mortgagor** covenants and agrees with **the Mortgagee** that in the event of default in the payment of any instalment or other moneys payable hereunder by **the Mortgagor** or on breach of any covenant, proviso or agreement herein contained, after all or any part of the moneys hereby secured have been advanced, **the Mortgagee** may, at such time or times as **the Mortgagee** may deem necessary and without the concurrence of any person, enter upon the said lands and may make such arrangements for completing the construction of, repairing or putting in order any buildings or other improvements on the mortgaged premises, or for inspecting, taking care of, leasing, collecting the rents of and managing generally the mortgaged property as **the Mortgagee** may deem expedient; and all reasonable costs, charges and expenses including allowances for the time and service of any employee of **the Mortgagee** or other person appointed for the above purposes shall be forthwith payable to **the Mortgagee** and shall be a charge upon the mortgaged property and shall bear interest at the mortgage rate until paid.

R.S., c. 97, Sch. B.

SCHEDULE C

PROVISIONS IN LEASES AND IN CONVEYANCES OF PERSONAL PROPERTY

Words, letters and figures in bold type are explanatory or by way of example, and may be freely modified to suit the context. Suitable changes may be made in the case of gender, corporations and the plural number. Expressions inserted in, or added before or after, those in Column One are deemed to be inserted in, or added before or after, the corresponding expressions in Column Two. The word "representatives" does not include the word "heirs" except in the case of a lessor who leases lands which the lessor holds in freehold tenure.

COLUMN ONE

COLUMN TWO

1. **The covenantor** covenants with **the covenantee**

1. **The said covenantor** for himself and his representatives hereby covenants to and with **the said covenantee**, his representatives and assigns

2. To pay the rent promptly
  3. To pay all rates and taxes except for local improvements within 30 days after they become due
  4. Where not paid the covenantee may recover the same as additional rent
  5. To repair, ordinary wear and tear and damage by fire, lightning, tempest and the like excepted
  6. That the covenantee may enter to inspect once a month
  7. And to repair within three months on written notice
  8. Not to alter the premises without written consent
  9. Not to assign or sublet without written consent
  10. To use the premises as a retail store only and in a lawful manner
  11. To clear snow, ice and obstructions
2. That he will during the said term pay unto the covenantee the rent hereby reserved promptly on the days and at the times and in the manner hereinbefore mentioned
  3. That he will during the said term pay all taxes (except for local improvements) and all pipe, water, gas, electric and meter rates which now are or may be assessed or charged against the premises hereby demised or against the covenantee in respect thereof within thirty days after the same shall become due and payable
  4. That the said taxes, pipe, water, gas, electric and meter rates in case of non-payment by the covenantor within said period of thirty days as aforesaid shall be recoverable by the covenantee as rent in addition to the said rental with all the remedies incidental thereto including that of distress as if the same were included in the rent hereby reserving that of distress as if the same were included in the rent hereby reserved
  5. That during the currency of the term the covenantor will keep the interior of said premises in good repair, ordinary wear and tear and injury by fire, lightning, tempest or other circumstances beyond the control of the covenantor alone excepted and subject as aforesaid will deliver up the premises in good repair at the expiration of the term or sooner determination thereof
  6. That it shall be lawful for the covenantee and his agents once a month during the said term to enter the said demised premises to examine and view the condition thereof
  7. And further that all want of reparation that upon such examination shall be found and that the covenantor has agreed hereunder to make good, and for the amendment of which notice in writing shall be left at the premises, the said covenantor will within three calendar months next after such notice well and sufficiently repair and make
  8. That he will not alter the interior or any part of the buildings or premises without the approval and consent in writing of the covenantee
  9. That he will not during the term, sell, assign, or sublet the said premises or any part thereof without the written consent of the covenantee first had and obtained
  10. That he will use the demised premises for the purpose of a retail store only and that at all times he will conduct an orderly business thereon complying with the law and all municipal or civic regulations applicable thereto
  11. That he will keep the premises free of snow and ice and of any obstructions as may be required by any municipal or civic ordinances or regulations applicable thereto

12. To deliver up the premises quietly at the expiry or sooner termination of the lease

13. **And the covenantor** covenants with **the covenantee** for quiet enjoyment subject to this lease

14. Provided that all fixtures and improvements become the property of **the lessor**

15. Provided that the lessee may remove the lessee's fixtures **when not in default hereunder**

16. Provided that in case of destruction **by fire or other casualty** the rent ceases until the premises are restored

17. **But** where part is usable, rent must be paid for it rateably **according to the cubic content**

18. **And** in case of total destruction the lease ends

12. That at the expiration of the term or previous determination of the lease he will peaceably and quietly yield and deliver up possession of the said demised premises to **the covenantee**

13. **And the covenantor** for himself and his representatives hereby covenants to and with **the covenantee**, his representatives and assigns for the peaceable and quiet enjoyment by **the covenantee**, his representatives and assigns of the premises hereby demised during the term hereby granted subject to the provisions of these presents

14. Provided always that at the expiration of the term or sooner determination of the lease all fixtures erected and improvements made on the premises shall remain the property of **the lessor**

15. Provided always and it is hereby expressly agreed that at or prior to the expiration of the term hereby demised **the lessee when not in default hereunder** may take, remove and carry away from the demised premises all fixtures, fittings, plant, machinery, utensils, shelving, counters, safes or other articles upon said premises in the nature of trade or tenant's fixtures or other articles brought upon the premises or belonging to **the said lessee** but **the lessee** shall in such removal do no damage to the said premises or shall make good forthwith any damage he may occasion thereby

16. And it is further agreed between the parties hereto that in case of partial or total destruction to such premises **by fire or other casualty** not being the act of or caused by **the lessee** or through his negligence or should any part of the said premises become so partially or totally destroyed as to be untenable and useless to **the lessee** then in such case the rent hereby reserved shall at once cease except as hereinafter provided until such premises or the part so destroyed shall be rebuilt or restored to their former condition; nevertheless a proportionate part of the current rent accrued at the time of such casualty shall forthwith be paid by **the lessee to the lessor**

17. **And** it is further provided and agreed that in case of damage or destruction to part of the premises demised so as not to interfere with access to or use of the undamaged or undestroyed part then **the lessee** shall continue to use such undamaged or undestroyed part during the period occupied by the repairs paying therefor a rateable proportion of the rent **computed according to the cubic content of the part in use compared with that of the whole** until the property is placed in condition for use as a whole

18. **And further** in case of total destruction of the premises this lease shall terminate and the rent accrued up to such time shall at once become due and payable

19. Where the lease is forfeited **the lessor** may re-enter on default of payment **for 10 days** or breach of covenant **or on execution against the goods of the lessee or on the insolvency of the lessee or on the premises becoming vacant**

19. And it is hereby further agreed between the parties hereto that if the rent reserved or any part thereof or the said taxes, pipe, water, gas, electric or meter rates agreed to be paid hereunder by **the lessee** shall be overdue or unpaid **for the period of ten days** whether such rent or other payment has been formally demanded or not, or **if the lessee** makes default or breach of any of the covenants hereinbefore set out **or if any of the goods or chattels of the lessee at any time during the term be seized or taken in execution or attachment or if the lessee becomes bankrupt or makes an assignment for the benefit of his creditors or in case the premises become vacant** the current as well as the next month's rent shall immediately become due and payable and **the lessor** or his agents or servants may at any time of day or night enter upon said premises and for that purpose may break open any doors, windows or locks that may be necessary to get possession of the same without being liable to any action or otherwise and may treat this lease as at an end and sell or re-let or otherwise deal with the premises in the same manner as if this lease had not been made

20. **The grantor** has good title

20. **The said grantor** is now rightfully and absolutely possessed of and entitled to the said hereby assigned goods and chattels and every part of them and every part thereof

21. **The grantor** has the right to convey as hereby conveyed

21. **The said grantor** now hath in himself good right to sell and assign the same unto **the said grantee**, his representatives and assigns in manner aforesaid and according to the true intent and meaning of these presents

22. **The grantee** shall have quiet enjoyment free from encumbrances

22. **The said grantee**, his representatives and assigns shall and may from time to time and at all times hereafter peaceably and quietly have, hold, possess and enjoy the said hereby assigned goods and chattels and every of them and every part thereof to and for his and their own use and benefit without any manner of hindrance, interruption, molestation, claim or demand whatsoever of, from or by **the said grantor** or any person or persons whomsoever, and that free and clear and freely and absolutely released and discharged or otherwise at the costs of **the grantor** effectively indemnified from and against all former and other bargains, sales, gifts, grants, titles, charges and encumbrances whatsoever

23. **The grantor** will procure such further assurances as may be reasonably required

23. **The said grantor** and all persons rightly claiming or to claim any estate, title or interest of, in or to the said hereby assigned goods and chattels and every of them and every part thereof, shall and will from time to time and at all times hereafter, upon every reasonable request of **the grantee**, his representatives or assigns, but at the costs and charges of **the grantee**, make, do and execute or cause or procure to be made, done or executed all such further acts, deeds and assurances for the more effectual assigning, transferring and assuring the said hereby assigned goods and chattels unto **the grantee**, his representatives and assigns, as by them or their counsel shall be reasonably advised or required

24. In trust on breach of any of the provisions of **this mortgage** to sell the same at public auction or by private contract and out of the proceeds to pay all expenses of the sale and then to retain to **the mortgagee** any balance of the principal and interest hereby secured then unpaid and to render any surplus to **the mortgagor**

24. On breach of the covenants, provisos and agreements hereinafter mentioned and expressed or any or either of them in trust to sell the same at public auction or by private contract and out of the proceeds arising from such sale to pay all the expenses connected with the said sale and then to retain to and reimburse **the mortgagee** any balance of the principal and interest thereon hereby secured or intended so to be that may then be unpaid and due to **the mortgagee** rendering the surplus if any there be to **the mortgagor**, his representatives and assigns

25. On condition that these presents are void if **the mortgagor** pays to **the mortgagee** (**here insert the amount and terms of repayment**)

25. Provided always and these presents are upon the express condition that if **the said mortgagor**, his representatives or assigns shall well and truly pay or cause to be paid unto **the said mortgagee**, his representatives or assigns the full sum of (**here insert the amount and terms of repayment**) then these presents shall be void otherwise to be and remain in full force, virtue and effect

26. **The mortgagor** may keep and use **the chattels** until default herein

26. Provided however and it is hereby agreed that until default of payment or other default or breach herein it shall be lawful for **the said mortgagor** to retain the possession and use of **the said chattels**

27. **The mortgagee** may forthwith seize the property and sell it as aforesaid on any attempt to remove or assign the same without the mortgagee's consent or if any action, judgment or execution be taken against the mortgagor or any other default herein

27. Provided always and it is hereby agreed between the parties hereto that if **any proceedings shall be taken to remove any of the property hereby conveyed without the consent of the mortgagee or to assign or to attempt to assign the same without such consent or if any legal proceedings shall be taken or any judgment entered against the mortgagor by any person or persons or execution issued against him or attempted to be levied on said property** or in case of any other default herein then in any of said cases it shall be lawful for **the mortgagee**, his representatives or assigns to take immediate possession of and sell the said property as hereinbefore provided before the expiration of the period or periods hereinbefore set out

28. To pay the principal and interest hereby secured when due

28. That **the mortgagor**, his representatives or assigns will pay or cause to be paid to **the mortgagee**, his representatives or assigns, the said sum hereby secured and interest at the times and in the manner hereinbefore specified and provided

29. To insure the property against fire for not less than . . . . . for the benefit of **the mortgagee**

29. That **the mortgagor** will insure and keep insured against fire in such good and sufficient insurance office or offices as shall be approved by **the mortgagee**, his representatives or assigns on the property hereby mortgaged and conveyed the sum of not less than . . . . . in the name and for the benefit of **the mortgagee**, his representatives and assigns, and will deposit with **the mortgagee** all policies and receipts for renewal premiums of such insurance

30. On default **the mortgagee** may effect the insurance and charge it against **the mortgage**

31. To observe and perform the terms hereof fully and faithfully.

30. In default thereof that **the mortgagee**, his representatives or assigns may as required, effect, renew and continue such insurance and charge all payments made for or in respect thereof with interest after the rate aforesaid upon the mortgaged property

31. That **the mortgagor** shall and will obey, abide by and perform all and every the terms and stipulations herebefore mentioned according to the true intent and meaning of these presents and every the covenants and agreements herein contained.

R.S., c. 97, Sch. C.

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## CHAPTER C-59

# An Act Respecting Co-operative Associations

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

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SHORT TITLE

**Short title**

**1** This Act may be cited as the *Co-operative Associations Act*. R.S., c. 98, s. 1.

INTERPRETATION

**Interpretation**

**2** In this Act,

“association” means an association incorporated under this Act and an association to which this Act applies;

“board” means the board of directors of an association;

“bylaws” means the bylaws made by an association;

“co-operative basis” means the carrying on of an enterprise organized, operated and administered in accordance with the following principles and methods:

- (a) each member or delegate has only one vote;
- (b) no member or delegate may vote by proxy;
- (c) interest or dividends on share or loan capital is limited to the percentage fixed in the articles of incorporation, or bylaws of the association;
- (d) the enterprise is operated as nearly as possible at cost after providing for reasonable reserves and the payment or crediting of interest or dividends on share or loan capital, and any surplus funds arising from the business of the organization, after providing for such reasonable reserves or dividends, unless used to maintain or improve services of the organization for its members or donated for community welfare or the propagation of co-operative principles, are distributed in whole or in part among the members or the members and patrons of the organization in proportion to the volume of business they have done with or through the organization; and
- (e) the shares in the capital stock of a co-operative association except for those referred to in Section 20, do not have attached any special preferences, rights, conditions, restrictions, limitations or prohibitions either by the articles of incorporation, amalgamation agreement, certificate of incorporation or of amalgamation, bylaws or otherwise, and may not be redeemed at more than par value or purchased by the association at less than par value without the approval of the Inspector;

“housing association” means an association that has as its primary purpose the provision of housing accommodation for occupancy by its members as nearly as possible at cost or that is operated in such a manner;

“immediate family”, when used to indicate a relationship with any person, means

- (a) any spouse or child of the person;
- (b) any relative of the person; or
- (c) any relative of the spouse of the person,

if that spouse, child or relative is living in the same home as the person;

“Inspector” means the Inspector of co-operative associations, and includes any person authorized by the Minister to perform the duties of the Inspector in the Inspector’s absence or incapacity or when the office of Inspector is vacant;

“loan capital” includes a sum contributed to an association by a member, in the member’s capacity as a member,

- (a) by way of contributions to capital otherwise than by the purchase of shares or the making of loans under Section 39; or
- (b) by allocation or payment pursuant to Section 42 or pursuant to an enactment, of net earnings or other sums available for distribution to members;

“member” means a person, association, society, partnership, corporation or institution that pursuant to the bylaws of an association is a member

of the association, and includes a person who has subscribed to the articles of incorporation;

“Minister” means the Minister of Service Nova Scotia or other member of the Executive Council who has the general administration of this Act;

“officer” includes a president, chair, secretary, treasurer, member of a board of directors or other person empowered under this Act, the regulations or the bylaws to give directions relating to the business of the association;

“Registrar” means the Registrar of Joint Stock Companies, and includes the Deputy Registrar or such person as the Governor in Council may from time to time authorize to perform the duties of the Registrar;

“regulations” means regulations made by the Governor in Council pursuant to this Act;

“special resolution” means a resolution passed, at a special or annual meeting of the association in respect of which notice specifying the intention to propose the resolution as a special resolution has been given in the manner provided by the bylaws of the association, by

(a) not less than two thirds of the votes cast by such members of the association entitled to vote as are present in person at the meeting; or

(b) such greater proportion of the votes cast as the bylaws require,

and approved by the Inspector and filed with the Registrar. R.S., c. 98, s. 2; 2001, c. 41, s. 1; 2014, c. 34, s. 5.

#### PURPOSE OF ACT

##### **Purpose of Act**

**3** The purpose of this Act is to provide for the incorporation, inspection, examination and supervision of associations whose primary purpose is to provide service to its members and that belong to the people who use the services, the control of which rests equally with all the members, and the gains from which are distributed among the members in proportion to the use they make of the services. R.S., c. 98, s. 3.

#### APPLICATION OF ACT

##### **Application of Act**

**4 (1)** This Act applies to all associations incorporated under this Act and to all associations to which Chapter 57 of the Revised Statutes, 1967, the *Co-operative Associations Act*, applied before August 1, 1977.

**(2)** The *Companies Act* does not apply to an association. R.S., c. 98, s. 4.

## ADMINISTRATION

**Inspector**

**5** (1) The Governor in Council may appoint such inspectors of co-operatives as are necessary for the administration of this Act.

(2) The Inspector

(a) shall examine the articles of incorporation and bylaws of all proposed associations desiring to be incorporated under this Act, inquire into the conditions under which any proposed association is intended to operate and approve or refuse to approve any articles and bylaws;

(b) may on the Inspector's own motion, and shall, upon requisition in writing signed by

(i) 50% of the members where there are 10 or fewer members of the association, or

(ii) six members or 10% of the members, whichever is the greater number, where there are more than 10 members of the association,

each of whom must have been a member of the association for at least 12 months preceding the date of the requisition, investigate, inspect, inquire and examine into the affairs and business of any association and report thereon to the board or to the members, or to both, whichever in the Inspector's opinion is appropriate;

(c) shall receive and file all returns and reports made by each association pursuant to this Act;

(d) shall prepare and deliver to the Minister each year in such form as the Minister may require a report showing the number of associations operating in the Province and the financial standing of each association;

(e) shall report annually to the Minister respecting associations in the Province;

(f) shall perform such other duties as may be required under this Act and as the Minister may direct.

(3) The Inspector may examine on oath the officers, agents and servants of any association in relation to its affairs and business and it is the duty of such officers, agents and servants to produce to the Inspector at the Inspector's request any or all of the books and documents in their custody and power.

(4) Failure of a person to produce upon request of an Inspector any book or document or failure to answer any question relating to the affairs or business of the association is an offence against this Act and a person found guilty is liable on summary conviction to a penalty not exceeding \$100 in respect of each offence. R.S., c. 98, s. 5; 2001, c. 41, s. 2.

## INCORPORATION

**Formation of association**

6 Any three or more persons of the age of majority or any two or more associations may, by subscribing their names to articles of incorporation in the form prescribed by the regulations and otherwise complying with the requirements of this Act respecting incorporation, form an association for the purpose of establishing and carrying on, on a co-operative basis, any lawful business, enterprise or service, other than that of a banking, a loan, a trust or an insurance company, either with or without capital divided into shares, that is to say either

(a) an association with capital divided into shares having the liability of its members limited by the articles of incorporation to the amount, if any, unpaid on the shares respectively held by them, in this Act termed as “an association limited by shares”; or

(b) an association without capital divided into shares having the liability of its members limited by the articles of incorporation to the amount, if any, unpaid on the membership fee that each member undertakes to contribute to the association, in this Act termed “an association limited by membership”. R.S., c. 98, s. 6.

**Association limited by shares**

7 In the case of an association limited by shares,

(a) the articles of incorporation must state

(i) the name of the association with the word “Co-operative” as a part of its name and with “Limited” as the last word in its name,

(ii) the objects of the association,

(iii) that the liability of the members is limited, and

(iv) the par value of the shares;

(b) no subscriber to the articles of incorporation may subscribe for less than one share; and

(c) each subscriber shall write opposite the subscriber’s name the number of shares the subscriber subscribes for and the subscriber’s address. R.S., c. 98, s. 7.

**Association limited by membership**

8 In the case of an association limited by membership,

(a) the articles of incorporation must state

(i) the name of the association with the word “Co-operative” as a part of its name and with “Limited” as the last word in its name,

(ii) the objects of the association,

(iii) that the liability of the members is limited, and

(iv) that amount of annual or other periodic membership fee as is prescribed by the bylaws;

(b) each subscriber shall write the subscriber's address opposite the subscriber's name. R.S., c. 98, s. 8.

#### Signing of articles of association

9 The articles of incorporation must be signed by each subscriber in the presence of at least one witness, each of whom shall sign the person's name and write the person's address. R.S., c. 98, s. 10.

#### Names

10 (1) Notwithstanding Sections 7 and 8, an association

(a) may have the word "Co-opérative" or "co-opérative" as part of its name in place of the word "Co-operative";

(b) may have the word "Limitée" or the contraction "Ltd" or the contraction "Ltée" as the last word in its name in place of the word "Limited".

(2) No person doing business in the Province shall use the word "co-operative" or any abbreviation or derivation thereof as part of its name with respect to its services or its method of conducting business or hold itself out to the public in advertisements, literature, signs, announcements or in any other manner to be a co-operative unless

- (a) incorporated under or subject to this Act;
- (b) incorporated by or under the *Canada Cooperatives Act*;
- (c) incorporated by or under an Act of the legislature of a province that authorizes either expressly or by implication the use of the word "co-operative"; or
- (d) incorporated by or under an Act of the Legislature that authorizes either expressly or by implication the use of the word "co-operative". R.S., c. 98, s. 11.

#### Approval of articles of incorporation

11 (1) Two copies of the articles of incorporation, together with a deposit of the fees payable to the Registrar, prescribed by the regulations and two copies of the bylaws signed by the subscribers to the articles of incorporation must be submitted to the Inspector, who on approval thereof shall endorse thereon a certificate to that effect, dated and signed by the Inspector, and shall thereupon transmit to the Registrar one copy of the articles of incorporation and one copy of the bylaws.

(2) Where the Inspector does not approve the articles of incorporation and bylaws, the Inspector shall return them together with the deposit to the proposed association with a statement of the Inspector's reasons for not approving them.

(3) A subscriber who is dissatisfied with the refusal of the Inspector to approve articles of incorporation and bylaws may, within 30 days of the

refusal, appeal to the Minister, who may confirm, vary or reverse the decision of the Inspector. R.S., c. 98, s. 12.

#### **Registration of articles of incorporation**

**12 (1)** Subject to subsection (2), on receipt of articles of incorporation and bylaws duly approved by the Inspector or the Minister in case of appeal, the Registrar shall register them.

**(2)** The Registrar may not register articles of incorporation and bylaws of an association

(a) whose name is identical with that of any other subsisting association or company incorporated or otherwise, or so nearly resembling the same as to be calculated to deceive except where such subsisting association or company is in the course of being dissolved and testifies its consent in such manner as the Registrar requires;

(b) without the consent of the Governor in Council whose name contains the words “Royal” or “Imperial” or that in the opinion of the Registrar suggests or is calculated to suggest the patronage of the Crown or any member of the Royal Family or connection with the Government or any department or agency thereof; or

(c) whose name is otherwise objectionable. R.S., c. 98, s. 13.

#### **Certificate of incorporation**

**13 (1)** On registration of articles of incorporation and bylaws the Registrar shall certify that the association is incorporated under this Act.

**(2)** A certificate of incorporation given by the Registrar in respect of any association is conclusive evidence that all the requirements of this Act respecting incorporation have been complied with and that the association is incorporated under this Act.

**(3)** From the date of incorporation mentioned in the certificate of incorporation the subscribers to the articles of incorporation together with such other persons as may from time to time become members of the association are a body corporate by the name mentioned in the certificate of incorporation, capable forthwith of exercising all the functions of an incorporated association and having perpetual succession and a common seal with power to hold lands, but with such liability on the part of the members to contribute to the assets of the association in the event of its being wound up as is mentioned in this Act. R.S., c. 98, s. 14; 2019, c. 27, s. 20.

#### **Articles and bylaws bind association and members**

**14** The articles of incorporation and bylaws bind the association and the members thereof to the same extent as if they respectively had been signed and sealed by each member, that member’s heirs, executors and administrators, to observe all the provisions of the articles and of the bylaws subject to this Act. R.S., c. 98, s. 15.

#### **Powers of association**

**15** Every association has, in addition to the acts and things included in the objects set out in its articles of incorporation, all power and capacity, as if the

same were included among the purposes and objects set out in its articles of incorporation, necessary to enable it to

(a) buy, sell, grow, produce, manufacture, repair, alter, exchange, store and deal in all articles or things within the scope of its objects as set forth in its articles of incorporation;

(b) purchase, take on lease or in exchange, hire or otherwise acquire or hold any real or personal property that the association may consider necessary or convenient for the purpose of its business;

(c) subject to the approval of the Inspector or with the sanction of a special resolution, sell, mortgage, lease or otherwise dispose of the property or undertakings of the association or any part thereof;

(d) subject to the approval of the Inspector or the sanction of a special resolution, guarantee the performance of obligations or contracts of any other person and, as security for such guarantee, charge the whole or any part of the property of the association;

(e) construct, improve, maintain, develop, work, manage, carry out or control any roads, ways, sidings, factories, warehouses, tanks, shops, stores and other works and conveniences that may seem calculated directly or indirectly to advance the interests of the association, and contribute to, subsidize or otherwise assist or take part in the construction, improvement, maintenance, working management, carrying out or control thereof;

(f) undertake and carry on all kinds of businesses or operations with the marketing, buying, selling, preserving, harvesting, drying, processing, manufacturing, canning, packing, grading, storing, handling or utilizing of any product, or the manufacturing or marketing of the by-products thereof;

(g) acquire or hire supplies, machinery or equipment, and make provision for the sale or hire, or for the extension of the use of the same to its members or patrons;

(h) with the sanction of a special resolution, acquire or undertake the whole or any part of the business, property, liabilities and undertaking of any other association, person, company or society, carrying on any business that the association is authorized to carry on, or possessed of property suitable for the purpose of the association;

(i) with the sanction of a special resolution, take or otherwise acquire and hold shares, stock, debentures or take securities of or acquire and hold membership in any other company, association or society incorporated under any Act of any province of Canada or under any Act of the Province or of Canada having objects wholly or in part similar to those of the association, and sell or otherwise deal with the same;

(j) subject to the approval of the Inspector, enter into any agreement for co-operation, joint adventure, reciprocal concession or otherwise with any other association, with any person or company, having objects wholly or in part similar to the objects of the association or engaged in any business or enterprise capable of being conducted so as directly or indirectly to benefit the association;

(k) enter into arrangements with any authorities, governmental, municipal, local or otherwise, that may seem conducive to the attainment of

the association's objects, or any of them, and obtain from such authority any rights, privileges and concessions that the association may have capacity to receive and may think desirable to obtain, and carry out, exercise and comply with any such arrangements, rights, privileges and concessions;

(l) establish and support or aid in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or ex-employees of the association or its predecessors in business, or the dependents or relatives of such persons, and grant pensions and allowances, and make payments towards insurance, and subscribe or guarantee money for charitable or benevolent objects, or for any public, general or useful object;

(m) draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading, warrants and other negotiable or transferable instruments;

(n) borrow and secure the payment of money in accordance with the provisions set forth in the bylaws and upon such terms and conditions as the board of directors may determine;

(o) invest the money of the association not immediately required in the business of the association in such manner as may be determined by the board of directors acting honestly and in good faith with a view to the best interest of the association and exercising the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances;

(p) take or hold mortgages, hypothecs, liens and charges to secure payment of the price of any part of the property of the association of whatever kind sold by the association or any money due to the association from purchasers and others and assign or otherwise dispose of the said mortgages, hypothecs, liens and charges;

(q) carry on, encourage and assist educational and advisory work relating to co-operative activities;

(r) enlarge the area of its operations by the establishment of branches or other means subject to this Act with respect to the establishment of branches;

(s) accept money on deposit from its members for future purchase of goods or services by the members, provided that an association accepting deposit money from its members keeps such money available to the member or at the member's demand;

(t) generally carry on or undertake any business that may seem capable of being conveniently carried on or undertaken in connection with the business of the association, or calculated directly or indirectly to enhance the value of or render profitable any property or rights of the association;

(u) do all or any of the above things as principal, agent, contractor or otherwise and by or through trustees, agents or otherwise and either alone or in conjunction with others;

(v) do all other things that are incidental or conducive to the attainment of the objects and the exercise of the powers of the association;

(w) with the authority of a special resolution and with the approval of the Minister, apply for a certificate of continuation that will per-

mit the co-operative to continue as a corporation to which an Act of the Parliament of Canada applies. R.S., c. 98, s. 16; 2001, c. 41, s. 23; 2019, c. 27, s. 21.

### **Powers of natural person**

**16** Subject to this Act, an association has the capacity, rights, powers and privileges of a natural person. 2001, c. 41, s. 4.

### **Articles of incorporation**

**17** The articles of incorporation of an association incorporated on or after November 13, 2001, must state whether or not the association is a non-profit association within the meaning of Section 66. 2001, c. 41, s. 4.

## AMENDMENT OF ARTICLES

### **Amendment of articles of incorporation**

**18 (1)** An association, with the sanction of a special resolution, may alter or amend its articles of incorporation with respect to the objects of the association so far as may be required to enable it to

(a) carry on some business that under existing conditions may conveniently or advantageously be combined with the business of the association;

(b) restrict or abandon any of the objects or powers in the articles or in Section 15; or

(c) enlarge or change the area of its operations.

**(2)** An association, with the sanction of a special resolution, may alter or amend its articles of incorporation with respect to the qualifications for admission of members.

**(3)** A certificate of the Registrar that a certified copy of such special resolution has been filed together with a copy of the articles as altered is conclusive evidence that all the requirements of this Act with respect to the alteration of the articles have been complied with and thenceforth the articles as altered are the articles of the association. R.S., c. 98, s. 18; 2001, c. 41, ss. 5, 23; 2019, c. 27, s. 22.

### **Change of name**

**19 (1)** Subject to the provisions of Section 12 and with the approval of the Registrar, an association may, by special resolution, change its name and in the special resolution fix the date on which the change of name will become effective, and, if such approval is given, the Registrar shall on the date on which the change of name becomes effective enter the new name on the register in place of the former name and shall issue a certificate of incorporation altered to meet the circumstances of the case.

**(2)** Where an association through inadvertence or otherwise is or has been registered by a name

(a) identical with that of any other subsisting association or company incorporated or unincorporated, or that the Registrar considers so nearly to resemble the same as to be calculated to deceive,

or contains any words prohibited under Section 12, except in a case in which such consent as aforesaid has been given; or

(b) that the Registrar considers to be otherwise objectionable by reason of this Section or otherwise,

the association shall, upon the direction of the Registrar, change its name, and if any association fails to change its name within two months after being so directed, the Registrar may change its name to any name the Registrar considers to be unobjectionable and upon the change being made the Registrar shall issue a new certificate of incorporation altered to meet the circumstances of the case.

(3) No alteration of the name of an association affects the rights or obligations of the association or renders defective any legal proceedings instituted or to be instituted by or against the association and any legal proceedings may be continued or commenced against the association by its new name that might have been continued or commenced against the association by the former name. R.S., c. 98, s. 19; 2001, c. 41, s. 23.

## PREFERENCE SHARES

### Preference shares

**20 (1)** An association may issue one or more classes of non-voting preference shares.

(2) The classes of preference shares referred to in subsection (1) are subject to the terms and conditions provided for in the bylaws of the association.

(3) The holder of preference shares may dissent if the association

(a) amends its bylaws to add, change or remove the rights, privileges, restrictions or conditions attached to preference shares;

(b) amends its articles of incorporation or bylaws to add, change or remove any restrictions on the business or businesses that the association carries on;

(c) amalgamates with another association;

(d) continues under the laws of another jurisdiction; or

(e) sells, leases or exchanges all or substantially all of its property other than in the ordinary course of business.

(4) Notwithstanding subsection 4(2), the Schedule to the *Companies Act* applies with necessary changes to dissent procedures for associations and preference shareholders.

(5) No preference shares may be redeemed or purchased by an association if there are reasonable grounds to believe that

(a) the association is, or would be after the payment, unable to pay its liabilities as they become due; or

(b) the realizable value of the association's assets after the payment would be less than the total of the par value of all its issued shares and liabilities.

(6) There must be included in every balance sheet of an association that has issued preference shares a statement specifying what part of the capital of the association consists of such shares.

(7) Where an association has issued preference shares that by the provisions attaching thereto may be redeemed or purchased by the association, the association may, subject to this Section, redeem or purchase such shares on such terms and in such manner as may be provided by the bylaws of the association and by the provisions attaching to the said shares and in accordance with any price or formula set out in its articles, bylaws or provisions attached to the said shares or, if none so provides, at fair market value.

(8) Where any such preference shares have been redeemed or purchased by the association, it shall, within one month after so doing, give notice thereof to the Inspector, specifying the number and value of shares so redeemed or purchased and in the amount at which each share was so redeemed or purchased. R.S., c. 98, s. 20; 2008, c. 50, s. 1.

## REGULATIONS AND BYLAWS

### Regulations and bylaws

21 (1) The Governor in Council may make regulations not inconsistent with this Act and such regulations apply to every association.

(2) An association may make bylaws not inconsistent with this Act or the regulations.

(3) The bylaws when approved by the Inspector and filed with the Registrar bind the members of the association to the same extent as if they had been signed and sealed by each member and contain covenants on the part of each member and that member's heirs, executors, administrators and successors to observe the bylaws subject to this Act. R.S., c. 98, s. 21.

## REGISTERED OFFICE

### Registered office

22 Every association shall have a registered office in the Province, to which all communication and notices may be addressed. R.S., c. 98, s. 22.

### Notice to Inspector and Registrar

23 An association shall give to the Inspector and the Registrar notice of the place of the registered office and of any changes therein within 28 days after the date of the incorporation of the association or of the change, as the case may be. R.S., c. 98, s. 23.

## MEMBERSHIP, SHARES AND LOANS

### Register

24 (1) Every association shall keep a register of members and enter therein the following particulars in respect of each member:

- (a) the names and addresses of members;

- (b) the date at which each person became a member;
  - (c) the date at which each person ceased to be a member;
- and
- (d) the name and address of each person nominated by a member as the member's beneficiary and the date of the nominations.

(2) Every association that has share capital shall keep a share register and enter therein a statement of the shares held by each member and of the amount paid and agreed to be considered as paid by the member.

(3) Every association that has loan capital or that borrows from its members shall keep a loan register and maintain in the register a current statement of the loan capital of each member and the amount outstanding of any money borrowed from each member.

(4) The register of members must be kept at the registered office of the association and must, subject to such reasonable restrictions as the association may in general meeting impose, be open to the inspection of any member free of charge.

(5) The share register must be kept at the registered office of the association and, subject to such reasonable restrictions as the association may in general meeting impose, a shareholder may inspect the portion of the register in which particulars of the shareholder's share holdings are entered.

(6) The loan register must be kept at the registered office of the association and, subject to such reasonable restrictions as the association may in general meeting impose, a member may inspect the portion of the register in which particulars of the member's loan capital or the amount borrowed from the member are entered.

(7) The register of members, the share register and the loan register are prima facie evidence of the facts set forth therein. R.S., c. 98, s. 24; 2001, c. 41, s. 7.

#### **Application for membership**

25 Application for membership in any association must be made in writing to the board of directors and no application for membership may be accepted and no allotment, assignment or transfer of a share or membership is valid unless and until approved by the board of directors in accordance with the provisions set forth by the bylaws of the association. R.S., c. 98, s. 25.

#### **Money payable as debt due**

26 (1) All money payable by a member to an association is a debt due from the member to the association and is recoverable as such.

(2) An association has a charge upon the shares or interest in the capital and on the deposits of a member or past member, and upon any dividend, bonus or accumulated funds payable to a member or past member, in respect of any debt due from that member or past member to the association, and may set off any sum credited or payable to the member or past member in or towards payment of any such debt. R.S., c. 98, s. 26.

**Shares paid for by instalment**

**27** Any share may be paid for by instalments at such times and in such manner as may be provided by the bylaws, but no member is entitled to draw from surplus anything based on more than the paid-up portion of the member's shares. R.S., c. 98, s. 27.

## DESIGNATION OF BENEFICIARY

**Designation of beneficiary**

**28 (1)** A member of an association who has attained the age of majority may, by writing, delivered at or sent to the registered office of the association, nominate any person to whom the member's shares, loan capital, deposits or other interest in the association must be transferred at the member's decease and may from time to time revoke or vary the nomination by writing similarly delivered or sent.

**(2)** Subject to approval of the board, the shares affected by the nomination are transferable to the nominee although the bylaws of the association declare its shares to be generally not transferable.

- (3)** Upon receiving satisfactory proof of the death of a member
- (a) who had filed a nomination pursuant to subsection (1);
  - and
  - (b) whose shares, loan capital, deposits and other interest do not at the date of the member's death exceed in value a total of \$2,000,

if no executor or administrator of the estate of such member is appointed within six months from the date of the member's death, the directors may either transfer such shares, loan capital, deposits and other interest in the manner directed by the nomination or, at their option, pay to the person entitled thereunder the full value of the same.

**(4)** Where a member of an association entitled at the member's death to an interest in the association of a total value of not more than \$2,000 in respect of shares, loan capital, deposits and other interest dies intestate and without having made a nomination under this Act that remains unrevoked at the member's death, and if no administrator of the estate of such member is appointed within six months of the member's death, the directors may transfer such shares, loan capital, deposits and other interest or, at their option, pay the value thereof to or among the persons who appear to a majority of the directors, upon such evidence as they may consider satisfactory, to be entitled by law to receive the same.

**(5)** Where a member who had made a nomination under subsection (1) subsequently makes a will that is inconsistent with the nomination and is unrevoked at the time of the member's death, the will operates as a revocation of the nomination. R.S., c. 98, s. 28; 2001, c. 41, s. 8; 2019, c. 27, s. 23.

## WITHDRAWAL OR EXCLUSION OF MEMBER

**Withdrawal or exclusion of members**

**29 (1)** A member may, in the manner prescribed by the bylaws and with the approval of the board of directors, withdraw from membership in the asso-

ciation, whereupon the member is entitled, subject to the regulations and the bylaws, to a refund of any amount held to the member's credit in share capital or otherwise in the association and upon which the association has no charge or other lawful claim but

(a) the board of directors may require notice not exceeding six months of any proposed withdrawal of a member's capital or other equity;

(b) where the value of the shares as determined by the directors and approved by the Inspector is less than par, the board of directors has the right to refund to a withdrawing member only such proportion of the par value of the member's shares as may appear to it to be just and reasonable;

(c) the association is not required to permit the withdrawal of a member's capital or other interest at any time when in the opinion of the board of directors such withdrawal would impair the financial stability of the association.

(2) A member who fails in the observance of any of the regulations or the bylaws of the association may, by resolution of the board of directors, be excluded from membership in the association whereupon the member is entitled to a refund of any amount held to the member's credit in share capital or loan capital and deposits and upon which the association has no lien or other lawful claim but

(a) notice must be sent by the board of directors by registered mail to such member to the member's last known address setting forth a date not sooner than one month after the date of mailing the notice upon which the member is to be excluded from membership in the association and stating the reasons therefor;

(b) the member so notified, if the member is not satisfied with the decision of the board, may at any time before the date upon which it is proposed that the member is to be excluded from membership in the association request the board to place the matter on the agenda for consideration by the membership during the next special or general meeting of the members; and

(c) the member who has been notified that the member is to be excluded from the association has the right to appear personally before the meeting to give reasons why the member should not be excluded after which the question must be submitted to a vote of the meeting and the decision of the meeting thereon is final. R.S., c. 98, s. 29.

## MEETINGS OF MEMBERS

### Meetings

**30** (1) Every association shall hold an organizational meeting within four months from the date of incorporation, and thereafter an annual meeting of every association must be held not later than four months after the end of each fiscal year.

(2) When default has been made in holding an organizational meeting or an annual meeting of the association in accordance with this Section, the Inspector may call, or direct the calling of, a special meeting of the association.

(3) A special meeting may be called at any time in the manner set forth in the bylaws of the association.

(4) The notice calling an annual or special meeting of the association must be in such form and given in such manner as may be set forth in the bylaws. R.S., c. 98, s. 30.

#### **Virtual meetings**

**31** Subject to the association's articles and bylaws, an organizational, annual or special meeting of an association may be held entirely or partially by telephonic or electronic means and a member who, through those means, votes at the meeting or establishes a communications link to the meeting is deemed, for the purpose of this Act, to be present at the meeting. 2022, c. 8, s. 6.

#### **Voting, delegates and books**

**32** (1) At all meetings of an association a member has one vote only on any question regardless of the number of shares held by the member and, excepting where provision is made for representation by delegates, no member may vote by proxy.

(2) Where by virtue of the bylaws of an association provision has been made for the nomination and appointment of delegates to an annual or special meeting, the members who have so nominated or appointed delegates may not thereafter, while such nomination or appointment remains in force, exercise the power of membership at any annual or special meeting and any reference in this Act to members is with respect to the exercise of such power deemed to be a reference to delegates.

(3) Where by virtue of the bylaws of an association provision is made for the election of directors of the association by members or delegates voting by districts, directors so chosen are deemed elected by all the members or delegates attending the said meeting to the same extent as if all the members or delegates had been present at such meeting.

(4) An association, if it is a member of another association formed under this Act or of an association to which this Act applies, or if not inconsistent with the *Canada Cooperatives Act* or an association formed or incorporated under that Act, may, in accordance with the provisions of its bylaws, authorize such person as it thinks fit to act as its delegate at any meeting of such association or company, and a person so authorized is entitled to exercise the same powers on behalf of the association that it represents as that association could exercise if it were an individual member.

(5) Every association shall cause minutes of all proceedings of annual or special meetings to be entered in a book kept for that purpose and any such minutes if purporting to be signed by the chair of the meeting at which the proceedings were had, or by the chair of the next succeeding meeting, are evidence of the proceedings.

(6) The books containing the minutes of proceedings of any annual or special meeting of an association must be kept at the registered office of the association and must, during at least two hours in each business day, be open to the inspection of any member without charge. R.S., c. 98, s. 31.

#### **Filing of special resolution**

**33 (1)** A copy of every special resolution duly certified by the secretary of the association must, within 15 days from the passing thereof, be forwarded to the Inspector, who upon approval thereof shall transmit the resolution to the Registrar who shall file the same.

(2) Where the Inspector does not approve the special resolution, the Inspector shall return the same to the association with a statement of the Inspector's reasons for not approving thereof.

(3) A special resolution is not valid unless and until it is filed with the Registrar. R.S., c. 98, s. 32; 2001, c. 41, s. 23; 2019, c. 27, s. 24.

### REGISTERS AND RECORDS

#### **Storage of registers and records**

**34** A register or record that is required by this Act to be prepared and maintained by an association may be

(a) stored in a bound or loose-leaf format or in a photographic film format; or

(b) entered or recorded in a system of mechanical or electronic data processing or an information storage device that is capable of reproducing information in an intelligible written format within a reasonable time. 2019, c. 27, s. 25.

#### **Examination**

**35** Where a person entitled to examine a register or record that is maintained by an association in a format other than a written format makes a request to examine the register or record, the association shall

(a) make available to that person, within a reasonable time, a reproduction of the text of the register or record in an intelligible written format; or

(b) provide facilities to allow that person to examine the text of the register or record in an intelligible written format and allow the person to make copies of the register or record. 2019, c. 27, s. 25.

#### **Preservation and maintenance**

**36** An association and its officers, agents and servants shall take reasonable precautions to preserve and maintain the association's registers and records by preventing their loss or destruction, preventing false entries and facilitating the detection and correction of inaccuracies. 2019, c. 27, s. 25.

## BOARD OF DIRECTORS

**Board of directors**

**37 (1)** The articles of incorporation of an association must include or be accompanied by a list of the names and addresses of not fewer than three and not more than seven persons to be first directors of the association and the persons so named hold office until a board of directors is elected pursuant to subsection (2).

**(2)** The members of every association shall within four months after the date of its incorporation elect a board of directors of such number of members and in such manner and for such term as are provided in the regulations, but in no case may the board of directors be fewer than three duly qualified members.

**(3)** Subject to the regulations and bylaws, the affairs of an association are managed by the board of directors.

**(4)** The qualifications, powers and duties of the directors are as set forth in the regulations and bylaws.

**(5)** Where a director fails to qualify for the office of director in accordance with the regulations and bylaws within two months after the date of the director's election or if the director fails in the discharge of any of the duties of the director's office, the board of directors may declare the director's office vacant and the vacancy so created must be filled by appointment by the remaining directors until the date of the next annual meeting or until such other date as may be fixed by the bylaws.

**(6)** At any annual meeting or at a special meeting called for the purpose, the members of the association by a vote of not less than two thirds of the members who are present and entitled to vote may remove a director from office before the director's term of office has expired.

**(7)** Where a vacancy occurs in the board of directors by reason of death or resignation or other cause, the vacancy so created must be filled by appointment by the remaining directors until the date of the next annual meeting or until such other date as may be fixed by the bylaws.

**(8)** No act of the board is invalid by reason only of a defect in the appointment or qualification of any director or directors.

**(9)** The board of directors shall cause minutes of all proceedings of directors' meetings to be entered in a book kept for that purpose and any such minutes if purporting to be signed by the chair of the meeting at which the proceedings were had or by the chair of the next succeeding meeting are prima facie evidence of the proceedings.

**(10)** The books containing the minutes of directors' meetings must be kept in the custody of such officer of the association as is designated in the bylaws and must at least during two hours in each business day be open to the inspection of any director without charge.

**(11)** A resolution in writing, signed by all the directors of an association who are entitled to vote on that resolution at a meeting of the directors or a

committee of the directors is as valid as if it had been passed at a meeting of the directors or a committee of the directors and is effective from the day specified in the resolution.

**(12)** Subject to the bylaws, a director may attend a meeting of the directors or a committee of the directors by means of a telephonic, electronic or other communication device that allows all persons participating in the meeting to communicate adequately with each other during the meeting.

**(13)** A director participating in a meeting through a device referred to in subsection (12) is considered to be present at the meeting. R.S., c. 98, s. 33; 2001, c. 41, s. 9; 2019, c. 27, s. 26.

## CONTRACTS

### Contracts

**38**

**(1)** Contracts on behalf of an association may be made as follows:

(a) any contract that if made between private persons would be by law required to be in writing and to be under seal may be made on behalf of the association in writing under the common seal of the association and may in the same manner be varied or discharged;

(b) any contract that if made between private persons would be by law required to be in writing and signed by the parties thereto may be made on behalf of the association in writing signed by any person acting under its authority, express or implied, and may in the same manner be varied or discharged;

(c) any contract that if made between private persons would by law be valid, although made by parol only and not reduced into writing, may be made by parol on behalf of the association by any person acting under its authority, express or implied, and may in the same manner be varied or discharged.

**(2)** The association may make marketing contracts with any of its members or any group or class of its members requiring them to sell for a period of time not over five years all or any part of their products specified in the contracts, exclusively to or through the association or any agency created or indicated by the association.

**(3)** Where a member of an association having entered into a marketing contract with the association does not within 12 months of the date of the contract make delivery of the products or commodities that the member is required by the contract to deliver, the member may be excluded from membership in the association in accordance with subsection 29(2).

**(4)** The board of directors has the power by resolution to pay over to the members of the association such part of the price of the commodity or commodities so sold as it considers advisable, but such resolution does not create a debt due or payable by the association to the members or any of them. R.S., c. 98, s. 34.

## BORROWING FROM MEMBERS

**Borrowing from members**

**39** An association may, by bylaw, authorize the borrowing of money from its members for definite periods of time and at specific rates of interest. R.S., c. 98, s. 35.

## DISTRIBUTION OF EARNINGS OR ASSETS

**Distribution of savings**

**40 (1)** Subject to the other provisions of this Section and Sections 41 and 42, the net savings of the association or other amounts available for distribution by the association at the close of each fiscal year must be paid or allocated in the manner set forth in the regulations and bylaws.

**(2)** An association

(a) shall set aside reserves in accordance with the regulations; and

(b) may provide for payment of interest to shareholders at a rate not exceeding a rate specified in the bylaw.

**(3)** An association may not allocate or pay a patronage rebate that will create or increase a deficit.

**(4)** Subject to the other provisions of this Section and to the bylaws, the net savings arising from the business of an association in each fiscal year of the association must be allocated, credited or paid to the members in proportion to the business done by each member with or through the association, at a rate in relation to the quantity, quality or value of the goods or products acquired, marketed, handled, dealt in or sold, or services rendered by the member or the association, from or on behalf of or to the member or to the association whether as principal or as agent of the member or otherwise, with appropriate differences in the rate for different classes, grades or qualities thereof.

**(5)** An association may, by bylaw, provide that part of the savings referred to in subsection (1) may be allocated, credited or paid to patrons of the association at the same or at lesser rates than to members.

**(6)** An association may, by bylaw, provide that where the value or quantity of the goods or products acquired, marketed, handled, dealt in or sold, or services rendered by the association from or on behalf of or to any member or patron in any year does not exceed such amount as is specified in the bylaw, no patronage rebate may be allocated, credited or paid to such member or patron. R.S., c. 98, s. 36; 2001, c. 41, s. 10.

## INVESTMENT OF PATRONAGE REBATES

**Investment of patronage rebate**

**41 (1)** An association may, by bylaw, provide that the whole, or such part as the directors may determine, of the patronage rebate of each member in respect of each fiscal year be applied to the purchase for the member of shares in the capital stock of the association, and any such bylaw must provide for the giving of

notice to each member of the number of shares to be purchased for the member thereunder, for the manner of issuance or transfer of shares thereunder and the payment therefor out of the patronage rebates of members and for the issuance and forwarding of certificates to members representing shares so issued or transferred.

(2) No member is required under this Section to purchase shares in the capital stock of an association at a price in excess of the par value thereof. R.S., c. 98, s. 37.

#### **Lending of patronage rebate**

42 (1) An association may enact bylaws requiring its members to lend to it the whole or such part as the directors may determine of the patronage rebates to which they may become entitled in each fiscal year upon such terms and at such rate of interest as the directors may determine but not exceeding such rate of interest as is provided in any such bylaw.

(2) Where an association is insolvent, no member is required under this Section to lend its patronage rebate to the association and no member is required under Section 41 to purchase shares in the capital stock of the association.

(3) Section 41 and this Section do not prevent a member of an association from receiving that portion of the member's patronage rebates that has not been appropriated to loans to the association or to the purchase of shares of the association in accordance with its bylaws. R.S., c. 98, s. 38.

#### **Distribution of gains**

43 (1) Notwithstanding any public or private Act, the allocation or payment by a co-operative association of its net savings or any other amount available for distribution or any part of the savings or other amount to or among its patrons does not constitute

- (a) a payment or distribution of a premium, discount, fund, refund, rebate, interest or dividend;
- (b) a failure to charge a fixed or prescribed price for any commodity; or
- (c) a failure to maintain the price for any commodity,

but does constitute the gains that are distributed among the members or patrons in proportion to the use they make of the co-operative services in their association.

(2) Where members of an association are required by a marketing plan established under an Act of the Legislature or the Parliament of Canada to sell or deliver goods or render services to or for a marketing board for the purpose of distributing the net savings of the association to the members thereof in accordance with this Act, the members are deemed to have sold, delivered or rendered those goods or services to the association. R.S., c. 98, s. 39.

### **AUDITS AND FINANCIAL RECORDS**

#### **Appointment, removal and report of auditor**

44 (1) Unless in a financial year at least two thirds of the members of the association consent in writing not to appoint an auditor in respect of that year,

the members or shareholders of every association shall, at each annual meeting, appoint an auditor or auditors to hold office until the next annual meeting.

(2) Where an appointment of an auditor is not made at an annual meeting or if a vacancy occurs in the office of auditor, the directors of the association shall appoint an auditor of the association to hold office until the next annual membership meeting.

(3) The first auditor or auditors of the association may be appointed by the board of directors at any time before the first annual membership meeting and auditors so appointed hold office until that meeting.

(4) The shareholders may, by resolution passed by a majority of the votes cast at a special meeting duly called for the purpose, remove an auditor before the expiration of the auditor's term of office, and shall by a majority of the votes cast at that meeting appoint another auditor in the auditor's stead for the remainder of the auditor's term.

(5) Before calling a special meeting for the purpose specified in subsection (4), the association shall, 15 days or more before the mailing of the notice of the meeting, give to the auditor

(a) written notice of the intention to call the meeting specifying therein the date on which the notice of the meeting is proposed to be mailed; and

(b) a copy of all material proposed to be sent to shareholders in connection with the meeting.

(6) The auditor has the right to make to the association, three days or more before the mailing of the notice of the meeting, representations in writing concerning

(a) the auditor's proposed removal as auditor;

(b) the appointment or election of another person to fill the office of auditor; or

(c) the auditor's resignation as auditor,

and the association, at its expense, shall forward with the notice of the meeting a copy of such representations to each shareholder entitled to receive notice of the meeting.

(7) None of the following persons are qualified for appointment as auditor of an association:

(a) a director, officer or employee of the same association;

(b) a person who is a partner of or in the employment of an officer or director of the association;

(c) the immediate families of those mentioned in clauses (a) and (b).

(8) An auditor who has any financial interest in an association shall disclose this interest to the Inspector before accepting engagement as auditor of an association.

(9) The auditor or auditors shall make a report to the members on the accounts examined by them and on every set of financial statements laid before the association in annual membership meeting during their tenure of office, and the report must state

(a) whether or not they reviewed the accounting procedures and performed such tests of accounting records and other supporting evidence as was necessary in the circumstances to justify the expression of an opinion on the financial statements; and

(b) whether in their opinion the financial statements present fairly the financial position of the association and the results of its operations and the changes in its financial position for the period reported on, in accordance with generally accepted accounting principles applied on a basis consistent with that of the preceding period.

(10) Every auditor of an association has a right of access at all times to the books and accounts and vouchers of the association, and is entitled to require from the directors and officers of the association such information and explanation as may be necessary for the performance of the duties of the auditors, and they are entitled to attend any annual or special membership meeting of the association at which any accounts that have been examined or reported on by them are to be laid before the association and to make any statement or explanation they desire with respect to the accounts.

(11) The auditor shall make such examination as will enable the auditor to report to the members as required by subsection (9) and shall also report any event, action or happening not in accordance with law to the association and the Inspector.

(12) Every auditor who wilfully fails to report on the accounts of an association as required by subsection (9) is liable to a penalty not exceeding \$100 for each failure.

(13) The Inspector may at any time appoint an auditor to make an audit of the financial affairs of an association and to submit a report of the audit to the Inspector.

(14) An auditor appointed under subsection (13) has all the powers and privileges of an auditor appointed by the association or by the directors and may be paid by the Minister such fees and expenses as the Minister determines. R.S., c. 98, s. 40; 2001, c. 41, s. 11.

#### **Books of account and audited financial statements**

**45 (1)** Every association shall cause to be kept at its registered office, or at such other place as the board of directors may direct, proper books of account with respect to

(a) all sums of money received and expended by the association and the matters in respect of which the receipt and expenditure takes place;

(b) all sales and purchases of goods and services by the association;

(c) the assets and liabilities of the association;

- (d) all other transactions affecting the financial position of the association; and
- (e) such other matters as the bylaws may set forth.

(2) The board of directors shall lay before the association at each annual meeting and at such other times as the bylaws may provide the audited financial statements and accompanying auditor's report for each fiscal year and such other periods as may be set forth in the bylaws. R.S., c. 98, s. 41.

#### Statement sent to Inspector

46 Every association shall, within two weeks after the annual meeting, send to the Inspector a general statement in such form and including such details as the Inspector may require of the affairs of the association. R.S., c. 98, s. 42; 2001, c. 41, s. 12.

### AMALGAMATION

#### Amalgamation

47 (1) Any two or more associations incorporated under this Act or to which this Act applies may amalgamate and continue as one association.

(2) The associations proposing to amalgamate may enter into an amalgamation agreement, which must prescribe the terms and conditions of the amalgamation and the mode of carrying the amalgamation into effect.

- (3) The amalgamation agreement must further set out
  - (a) the name of the amalgamated association determined in accordance with this Act;
  - (b) the objects for which the amalgamated association is to be established;
  - (c) whether the amalgamated association is an association limited by shares or limited by membership and
    - (i) where the amalgamated association proposed to be established is an association limited by shares, the par value of the shares, or
    - (ii) the amount of membership fee that each member of the amalgamated association has contributed or undertakes to contribute to the association; and
  - (d) such other details as may be necessary to perfect the amalgamation and to provide for the subsequent management and working of the amalgamated company.

(4) The amalgamation agreement must be submitted to the Inspector and the members of each amalgamating association at special meetings thereof called for the purpose of considering the agreement and, if the amalgamation agreement is approved by a special resolution of each association and by the Inspector,

- (a) the secretary of each amalgamating association shall certify this fact under the seal of the association; and

(b) the amalgamating agreement is deemed to have been adopted by each of the amalgamating associations.

(5) On receipt of the amalgamation agreement, and the approving documents required, the Registrar shall issue a certificate of amalgamation certifying that the amalgamating associations have amalgamated.

(6) On and from the date of the certificate of amalgamation the amalgamating associations are amalgamated and are continued as one association, hereinafter called the “amalgamated association” under the name and having the objects and share capital or membership fees specified in the amalgamation agreement.

(7) The amalgamated association thereafter possesses all the property, rights, privileges and franchises, and is subject to all the liabilities, contracts and debts of each of the amalgamating associations, and all the provisions of the amalgamation agreement respecting the name of the amalgamated association, its objects and share capital or membership fees are deemed to constitute the articles of incorporation of the amalgamated association.

(8) Subject to the right to make bylaws, the bylaws of the amalgamated association are the regulations. R.S., c. 98, s. 43; 2001, c. 41, s. 23; 2019, c. 27, s. 27.

#### WINDING UP AND DISSOLUTION

##### **Dissolution of association**

**48** (1) Subject to the approval of the Inspector, an association may be dissolved by special resolution.

(2) The special resolution must set forth in detail the assets, liabilities and members' equity as shown by the records of the association and an estimate of the realizable value of the assets and the claims of the creditors and members.

(3) A statutory declaration must be made by the president and secretary of the association that this Act has been complied with, and must be sent to the Inspector with a copy of the resolution certified by the president and secretary to be a true copy.

(4) The Inspector, if the Inspector approves the resolution, shall cause a notice of dissolution to be filed with the Registrar and advertised at the expense of the association in the Royal Gazette and in a newspaper circulating in the district in which the head office of the association is situated.

(5) Before approving of dissolution, the Inspector may require evidence that those voting for the resolution represent at least 25% of the members' total equity in the association.

(6) Where the Inspector does not approve of the resolution on the ground that it did not receive the approval of those representing at least 25% of the members' equity or on such other grounds as may to the Inspector appear reasonable, the Inspector may request the directors to call a special meeting of the members to reconsider the resolution.

(7) Distribution of the assets of the association must not be made until six weeks after publication of the latest advertisement of dissolution and if, in the meantime, any new valid claims have been discovered, the amount of those claims must be deducted from the amount of undistributed surplus set forth in the resolution and if new claims discovered amount to more than the amount of undistributed surplus, the whole matter must then be referred to the Inspector who may refuse dissolution proceedings under this Section.

(8) The Inspector may require annual or other returns showing progress of dissolution, the distribution of any surplus or the progress of the administration of any trust in accordance with this Section.

(9) Where the holder or holders of any claims against the association, whether for debt, share capital invested or otherwise, cannot be discovered after reasonable investigation, the directors may deposit the amount of those claims in a chartered bank or credit union and, unless claimed by the holder or holders within a period of three years after the deposit, the directors may, with the approval of the Inspector, pay such amounts with any interest accrued thereon to such organizations or associations or for such purposes as are prescribed by the regulations.

(10) Where the affairs of an association have been wound up, a statutory declaration to that effect must be made by the liquidator or liquidators of the association and forwarded to the Inspector and the Registrar and the declaration must state that the affairs of the association have been wound up and that the provisions of this Act with respect to the dissolution of the association and the winding up of its affairs have been complied with.

(11) Where an association is dissolved by a special resolution of the members, the members may appoint one or more liquidators approved by the Inspector to wind up the affairs of the association in accordance with the resolution and this Act, and the costs and expenses incurred in connection with the winding up must be paid out of the funds of the association.

(12) Where the members of an association do not appoint a liquidator or liquidators at the time the special resolution to dissolve the association is passed, the Inspector shall, upon approving the resolution, appoint a liquidator or liquidators to wind up the affairs of the association in accordance with the resolution and this Act, and the costs and expenses incurred in connection with the winding up must be paid out of the funds of the association.

(13) Any amount remaining after providing for all claims of creditors and members must be paid out in accordance with Section 65 or 72. R.S., c. 98, s. 44; 2001, c. 41, ss. 13, 23; 2019, c. 27, s. 28.

#### **Association not in business**

49 (1) Where the Inspector has reasonable cause to believe that an association is not carrying on business or is not in operation, the Inspector shall send to the secretary of the association, by post, a letter inquiring whether the association is carrying on business or is in operation.

(2) Where the Inspector does not within one month of sending the letter receive an answer thereto, the Inspector shall, within 14 days after the expiration of the month, send to the secretary of the association, by post, a registered letter

referring to the first letter and stating that no answer thereto has been received and that if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the Royal Gazette with a view to striking the name of the association off the register.

(3) Where the Inspector receives an answer from the association to the effect that it is not carrying on business or in operation, or does not within one month after sending the second letter receive an answer thereto, the Inspector may publish in the Royal Gazette that at the expiration of one month from the date of that notice the name of the association mentioned therein will, unless cause is shown to the contrary, be struck off the register and the association dissolved.

(4) At the expiration of the time mentioned in the notice, the Inspector may, unless cause to the contrary is previously shown by the association, notify the Registrar, who shall strike the name of the association off the register, whereupon the association is dissolved.

(5) In case of dissolution under this Section, subsections 48(9) and (10) apply.

(6) Where an association is dissolved under this Section, Section 65 or 72 applies to the distribution of any undistributed surplus that remains after the claims of creditors, if any, and equities of members, including amounts paid on shares or membership certificates or loaned to the association through the retention of patronage refunds or otherwise, have been satisfied. R.S., c. 98, s. 45; 2001, c. 41, s. 14.

#### **Dissolution by Registrar**

**50** (1) The Registrar may direct the Inspector to dissolve by order an association to which this Act applies if the Registrar is satisfied that

- (a) the incorporation was obtained by fraud or mistake;
- (b) the association exists for an illegal purpose;
- (c) the association has wilfully, after notice by the Inspector, violated any of the provisions of this Act or the regulations;
- (d) the association is no longer operating on a co-operative basis; or
- (e) the number of members of the association has been reduced below the minimum number required by this Act for the incorporation of the association.

(2) The Inspector shall give the association not less than three months notice of the proposed dissolution, specifying the reason therefor and stating that unless cause is shown to the contrary within the said period the name of the association will be struck off the register and the association dissolved.

(3) At the expiration of the time mentioned in the notice, the Inspector may, unless cause is shown to the contrary, notify the Registrar, who shall strike the name of the association off the register, and in such case the Registrar shall publish notice thereof in the Royal Gazette, whereupon the association is dissolved. R.S., c. 98, s. 46; 2001, c. 41, s. 15.

**Compliance with Sections 45 and 46**

**51 (1)** Where an association fails to maintain the books of account referred to in Section 45, or to lay before the members the audited financial statement in accordance with that Section or to send to the Inspector the audited financial statement as required by Section 46, the Inspector may, unless the association furnishes satisfactory reasons for delaying the preparation of the financial statement and its presentation to an annual meeting for an additional period not exceeding three months, require the directors to call a special meeting of the association for the purpose of considering the business transacted during the preceding fiscal year and arrangements for furnishing to the members and to the Inspector the information specified in Sections 45 and 46.

**(2)** Where the directors fail to call a special meeting of the association, the Inspector may call a special meeting to review the financial position of the association and the members' interests therein, and to ascertain whether the members desire to continue the association in operation and comply with Sections 45 and 46.

**(3)** Where a quorum of members is not present at a special meeting called under subsection (2), or where the members fail to pass a resolution to the effect that the association shall carry on business with an accounting to the members as provided in Section 45, the Inspector may notify the directors by registered mail that unless the said Section is complied with within one month from the date of the notice, the association will be struck off the register and dissolved.

**(4)** The Inspector may, in the Inspector's discretion, extend the period mentioned in subsection (3), but if the default is not remedied in accordance with the notice or within the extended time, as the case may be, the Inspector shall notify the Registrar, who shall strike the name of the association off the register, and, in such case, the Inspector shall publish notice thereof in the Royal Gazette, whereupon the association is dissolved.

**(5)** Where an association that has been struck off the register in accordance with this Section subsequently complies with Section 45 by furnishing to the members the information prescribed for the period of default and the members pass a resolution requesting that the association be restored to the register, the Inspector shall, if the Inspector receives a satisfactory return for the period of default, request the Registrar to restore the association to the register upon payment of the fees prescribed for that purpose and publish in the Royal Gazette a notice that the name of the association has been restored to the register and thereupon the association is deemed to have continued in existence, and the association and all persons are in the same position as if the name of the association had never been struck off.

**(6)** Where an association is dissolved under this Section and has not been restored to the register pursuant to subsection (5), then subsections 48(8), (9) and (10) and 49(6) apply. R.S., c. 98, s. 47.

**Appointment of liquidator**

**52** Where

- (a) an association is dissolved pursuant to subsection 49(4) or 50(3); or

(b) an association is dissolved pursuant to subsection 51(4) and the association is not within a reasonable time restored to the register pursuant to subsection 51(5),

the Inspector may appoint a liquidator to wind up the affairs of the association in accordance with this Act and the costs and expenses incurred in connection with the winding up must be paid out of the funds of the association. R.S., c. 98, s. 48.

#### **Commencement of winding up**

**53** A winding up is deemed to commence at the time the special resolution for dissolution of the association is approved by the Inspector under Section 48, or at the time the name of the association is struck off the register under Section 49, 50 or 51, as the case may be. R.S., c. 98, s. 49; 2001, c. 41, s. 23.

#### **Association ceases to carry on business**

**54** An association shall, from the date of the commencement of the winding up, cease to carry on its business except in so far as may be required for the beneficial winding up thereof and any transfers of shares except transfers made to or with the sanction of the liquidator or liquidators, or any alteration in the status of the members of the association after the commencement of the winding up are void. R.S., c. 98, s. 50.

#### **Appointment of two or more liquidators**

**55 (1)** Where two or more liquidators are appointed, all the provisions herein in reference to a liquidator apply to the liquidators.

**(2)** Upon the appointment of a liquidator under subsection 48(11) or (12) or Section 52, all the powers of the directors cease except in so far as the liquidator sanctions the continuance of those powers.

**(3)** Where several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment or, in default of such determination, by any number of the liquidators not fewer than two.

**(4)** The members of an association may, at the time they appoint a liquidator or at a subsequent special meeting, pass a resolution or order directing the liquidator how to dispose of the property, real or personal, of the association, and in default of their so doing the liquidator is subject to the directions, orders and instructions of the Inspector with regard to the mode, terms and conditions by which the liquidator may dispose of the whole or any part of the property of the association.

**(5)** Where a vacancy in the office of liquidators occurs by reason of death, resignation or otherwise, the Inspector may appoint another person to fill the vacancy.

**(6)** In all proceedings connected with the association, the liquidator must be described as the liquidator of the (name of association) and not by the liquidator's individual name only. R.S., c. 98, s. 51.

**Duties and powers of liquidator**

**56 (1)** The liquidator, upon the liquidator's appointment, shall take into the liquidator's custody or under the liquidator's control all the real and personal property, effects and choses in action to which the association is or appears to be entitled.

**(2)** The liquidator shall, within 60 days after the liquidator's appointment, prepare a statement of the assets, liabilities and members' equity as shown by the records of the association and an estimate of the realizable assets and the claims of the creditors and members, and shall forthwith send a copy thereof to the Inspector.

**(3)** The liquidator may

(a) bring or defend any action or other legal proceeding in the name and on behalf of the association;

(b) carry on the business of the association so far as may be necessary for the beneficial winding up thereof;

(c) borrow money on the security of the property of the association;

(d) sell the real and personal property and choses in action of the association by public auction or private contract, and transfer the whole thereof to any person or sell the same in parcels;

(e) employ an agent to do any business that the liquidator is unable to do personally;

(f) make any compromise or arrangement with any creditor or class of creditors, or any person claiming to be a creditor or having or alleging to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the association or whereby the association may be rendered liable;

(g) make any compromise or arrangement in respect of calls and liabilities and calls, debts and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the association and a contributory, or alleged contributory, or other debtor or person possibly involving liability to the association, and all questions in any way relating to or affecting the assets or the winding up of the association, on such terms as may be agreed upon, and may take any security for the discharge of such call, debt, liability or claim and give a complete discharge in respect thereof;

(h) do all acts and execute, in the name and on behalf of the association, all deeds, receipts and other documents, and for that purpose use, when necessary, the seal of the association;

(i) draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the association with the same effect with respect to the liability of the association as if the bill or note had been drawn, accepted, made or endorsed by or on behalf of the association in the course of its business;

(j) do such other things as are necessary for winding up the affairs of the association and distributing its assets.

(4) The liquidator may retain lawyers, accountants, engineers, appraisers and other professional advisers.

(5) The liquidator may not purchase directly or indirectly any part of the stock-in-trade, debts or assets of any description of the association.

(6) The liquidator shall deposit in a chartered bank or credit union all sums of money that the liquidator has in the liquidator's hands belonging to the association whenever those sums amount to \$100 or more.

(7) Such deposits must not be made in the name of the liquidator generally but a separate deposit account must be kept for the association of the money belonging to the association in the name of the liquidator of the association.

(8) The liquidator shall furnish to the Inspector such annual or other returns as the Inspector may require showing the progress of the winding up, the distribution of any surplus and any other information the Inspector may require. R.S., c. 98, s. 52; 2001, c. 41, s. 16.

#### **Date for sending in claims**

57 (1) The liquidator may fix a certain day on or before which creditors of the association and others having claims thereon are to send in their claims.

(2) Such day must be not less than two months from the first publication of the notice thereof.

(3) Where the liquidator has given notice of such day by publication in an issue of a newspaper published at or nearest to the chief place of business of the association, once in the first week and once in the fourth week of the said period of two months, the liquidator is, at the expiration of the time named for sending in such claims, at liberty to distribute the assets of the association, or any part thereof among the parties entitled thereto, having regard to the claims of which the liquidator then has notice, and the liquidator is not liable for the assets or any part thereof so distributed to any person of whose claim the liquidator had not notice at the time of distribution, but nothing in this Act prejudices the right of any creditor or claimant to follow assets into the hands of any person who has received them. R.S., c. 98, s. 53; 2001, c. 41, s. 17.

#### **Payment of wages takes priority**

58 In distributing the assets of an association the liquidator shall pay, in priority to the claims of the ordinary or general creditors of the association, the wages or salary of all persons, other than directors, in the employment of the association at the time of the commencement of the winding up or within one month before, not exceeding three months wages or salary, and those persons are entitled to rank as ordinary or general creditors of the association for the residue, if any, of their claims. R.S., c. 98, s. 54.

**Payment of costs**

**59** All costs, charges and expenses properly incurred in the winding up of an association, including the remuneration of the liquidator, are payable out of the assets of the association in priority to all other claims. R.S., c. 98, s. 55.

**Remuneration of liquidator**

**60 (1)** Where there is no agreement or provision fixing the remuneration of the liquidator, the liquidator is entitled to a commission on the amount realized on the disposition of the assets of the association less any expenses incurred on their dispositions, such commission to be five per cent on any amount realized not exceeding \$5,000, the further sum of two and a half per cent on any amount realized in excess of \$5,000 and not exceeding \$10,000, and a further sum of one and one quarter per cent on any amount realized in excess of \$10,000, which commission is in lieu of all fees and charges for the liquidator's services.

**(2)** Upon application to the Inspector by the liquidator, the Inspector may increase the fees and commissions set out in subsection (1). R.S., c. 98, s. 56; 2001, c. 41, s. 18.

**Statutory declaration after winding up**

**61 (1)** When the affairs of an association have been wound up, a statutory declaration to that effect must be made by the liquidator and forwarded to the Inspector.

**(2)** The declaration must state that the affairs of the association have been wound up and that the provisions of this Act with respect to the winding up of the association have been met.

**(3)** The liquidator shall prepare and file with the Inspector together with the said declaration a detailed statement showing all receipts and disbursements and such other information as the Inspector may require. R.S., c. 98, s. 57.

**Association may still be sued**

**62** In the case of a dissolution of an association under this Act, the association shall nevertheless be considered as subsisting and be in all respects subject to this Act, so long and so far as any matter relating to it remains unsettled, to the intent that the association may do all things necessary to the winding up of the concerns thereof and may sue and be sued under this Act in respect of all unsettled matters. R.S., c. 98, s. 58.

**Limitation on responsibility for records**

**63** After the lapse of five years from the date of dissolution, no responsibility rests on the association or liquidators or anyone to whom the custody of such books, accounts and documents has been committed, by reason that the same or any of them are not forthcoming to any party claiming to be interested in them. R.S., c. 98, s. 59.

**Effects of winding up**

**64** In the event of an association being wound up,

(a) no contribution is required from a member of an association limited by shares, exceeding the amount, if any, unpaid on the shares for which the member has subscribed;

(b) no contribution is required from a member of an association limited by membership, exceeding the amount, if any, unpaid on the membership for which the member has applied;

(c) nothing in this Act invalidates any provision contained in any contract whereby the liability of the individual members of the contract is restricted, or whereby the funds of the association are alone made liable in respect of the contract;

(d) a sum due to any member of an association, in the member's capacity as a member, by way of an allocation or payment of the member's net earnings, or any other amount available for distribution or otherwise, is not a debt of the association payable to that member in a case of competition between the member and any other creditor not a member of the association;

(e) after the claims of all creditors have been settled, any remaining sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves;

(f) the claims of all creditors must be settled before any distribution of loan capital or share capital, and the loan capital and share capital must be considered one;

(g) every shareholder has equal rights with every other shareholder, notwithstanding the fact that shares may be acquired by different means. R.S., c. 98, s. 60.

#### **Payment of balance by liquidator**

**65 (1)** When an association, other than a non-profit association referred to in Section 66, is dissolved or wound up and

(a) all debts payable by the association; and

(b) all expenses of or incidental to the winding up and the realization of the assets of the association,

are paid and there is any balance remaining, the balance must, subject to subsections (2), (3) and (4), be paid by the liquidator in accordance with any provisions respecting the paying out of the remaining balance set out in the articles or bylaws of the association.

**(2)** Where an association to which subsection (1) applies is an association that, on November 13, 2001, had provisions respecting the paying out of the remaining balance set out in the articles or bylaws of the association, the remaining balance must be paid out in accordance with those provisions.

**(3)** Where an association to which subsection (1) applies is an association that, on November 13, 2001, did not have provisions respecting the paying out of the remaining balance set out in the articles or bylaws of the association or, where it has become impracticable for an association to which subsection (2) applies to comply with the provisions referred to in subsection (2), the association may, before being dissolved or wound up,

(a) apply to the Inspector in accordance with the regulations for approval of the manner in which the remaining balance is to be paid; or

(b) by special resolution provide that the remaining balance is to be paid to a fraternal, charitable, community or developmental organization not having the purpose of carrying on any trade, industry or business and carrying on without purpose of gain to any member or to a non-profit association referred to in Section 66,

and the balance must be paid by the liquidator in the manner approved by the Inspector pursuant to clause (a) or to such organization or organizations as provided for pursuant to clause (b).

**(4)** Where

(a) an association referred to in subsection (3) does not act pursuant to either clause (3)(a) or (b) before being dissolved or wound up; or

(b) the Inspector does not approve an application made pursuant to clause (3)(a),

the balance must be paid by the liquidator to a fraternal, charitable, community or developmental organization or other organization not having the purpose of carrying on any trade, industry or business and carrying on without purpose of gain to any member or to a non-profit association referred to in Section 66, in the manner and proportions set out in the regulations.

**(5)** Notwithstanding subsection (2), an association referred to in subsection (2) may, before being dissolved or wound up, provide by unanimous resolution of the members that the remaining balance is to be paid to a fraternal, charitable, community or developmental organization not having the purpose of carrying on any trade, industry or business and carrying on without purpose of gain to any member or to a non-profit association referred to in Section 66, and the balance must be paid by the liquidator to such organization or organizations as provided for in the resolution. 2001, c. 41, s. 19.

## NON-PROFIT ASSOCIATIONS

### Non-profit association

**66** For the purpose of this Act, an association is a non-profit association if

(a) its articles or bylaws specify that it is a non-profit association;

(b) it is an association that, on November 13, 2001,

(i) had articles or bylaws that provided it was to be operated on a non-profit basis or that it was to carry on its activities without purpose of gain to any of the members, or

(ii) had articles or bylaws that provided that upon dissolution the property of the association, after satisfaction of its debts, liabilities and expenses, was not to be disposed of or distributed among the members or was to be paid to a non-profit association or a frater-

nal, charitable, community, developmental or other such organization that is carried on without purpose of gain to any of the members;

(c) it is a housing association that has received from the Government of Canada or the Province, or an agency of either of them, a subsidy or assistance that assisted with or reduced housing costs;

(d) it is a housing association that operated under an agreement with Canada Mortgage and Housing Corporation that provided it was to be operated on a non-profit basis or that upon dissolution or wind-up the property of the association, after satisfaction of its debts, liabilities and expenses, was not to be disposed of or distributed among the members or was to be paid to a similar association or a fraternal, charitable, community, developmental or other such organization that is carried on without purpose of gain to any of the members;

(e) it files income tax returns as a not-for-profit corporation; or

(f) it is an association or in a class of associations that are prescribed to be non-profit in the regulations. 2001, c. 41, s. 20.

#### **Prohibition**

**67** Notwithstanding any enactment, no non-profit association may be converted into or continued as any other kind of association or corporation. 2001, c. 41, s. 20.

#### **Prohibition**

**68** No non-profit association may pay any dividends on share capital or interest on share capital to its members. 2001, c. 41, s. 20.

#### **Profit**

**69 (1)** A profit resulting from revaluation or sale of real or personal property of a non-profit association must

(a) be set aside as a reserve fund for unforeseen operating losses or other contingencies, or for the maintenance or further development of the services provided by the association; or

(b) where the members authorize by special resolution at an annual meeting, be donated by the association to one or more local organizations, associations or groups with objectives of a benevolent or charitable nature or non-profit housing associations with similar objectives.

**(2)** A reserve fund established under this Section must be invested in the manner prescribed by the regulations. 2001, c. 41, s. 20.

#### **Prohibition**

**70** No member of a housing association that is a non-profit association is entitled to a profit or capital gain because of the occupancy, transfer or surrender of a unit of housing of the association or because of a transfer or termination of membership in the association. 2001, c. 41, s. 20.

**Non-profit association**

**71 (1)** A non-profit association shall operate without profit for its members and any profit or other revenues received by the association must be used to promote its objects.

**(2)** No part of the income or property of a non-profit association may be paid to or otherwise made available for personal benefit to a member of that association.

**(3)** Nothing in this Section prohibits a non-profit association from

(a) paying a reasonable amount to a member for services provided to the association if the provision of the services and the amount to be paid for them were approved by the board in advance of the services being provided; or

(b) where the association is a housing association, paying reasonable compensation to a member for improvements to a housing unit if the improvements and the amount to be paid for them were approved by the board in advance of the improvements being made. 2001, c. 41, s. 20.

**Distribution of property upon dissolution**

**72 (1)** When a non-profit association is dissolved or wound up, any property of the association remaining after payment of all debts payable by the association and all expenses of or incidental to the dissolution or winding up and the realization of the assets must be distributed to a fraternal, charitable, community, developmental or other non-profit organization, including another non-profit association.

**(2)** The articles or bylaws of a non-profit association may designate the organizations to which the property of the association is to be distributed pursuant to subsection (1).

**(3)** Where the articles or bylaws of a non-profit association do not designate any organization pursuant to subsection (2) or where a designated organization has ceased to exist or be eligible pursuant to subsection (1), the property of the association must be distributed to organizations eligible to receive it pursuant to subsection (1) in the manner and proportions set out in the regulations. 2001, c. 41, s. 20.

**OFFENCES****Offence and penalty**

**73 (1)** It is an offence against this Act if any association

(a) fails to give notice, send any return or document, or do or allow to be done any act or thing, that the association is by this Act required to give, send, do or allow to be done;

(b) wilfully neglects or refuses to do any act, or to furnish any information required for the purposes of this Act by the Inspector or Registrar, or other person authorized under this Act, or does any act or thing forbidden by this Act;

(c) wilfully makes any false return or wilfully furnishes any false information.

(2) Every person who, or association that, violates any provision of this Act is guilty of an offence against this Act.

(3) Every director or officer of an association who, having knowledge of the facts, moves, seconds, puts or supports by the director's or officer's vote any motion, resolution or proposal that if carried out would constitute an offence against this Act is guilty of an offence against this Act and every act or default constituting an offence under this Act, if continued, constitutes a new offence in every week during which it continues.

(4) Every association or other corporation guilty of an offence against this Act for which no penalty has been specifically provided is liable on summary conviction to a penalty of not more than \$5,000. R.S., c. 98, s. 62.

#### FEES

##### Fees

74 The services of the Inspector and the Registrar for which fees are payable and the amount of the fees are determined by the Governor in Council by regulation. R.S., c. 98, s. 63.

#### REGULATIONS

##### Regulations

- 75 (1) The Governor in Council may make regulations
- (a) defining expressions not already defined in the Act;
  - (b) prescribing procedure and the fixing of a quorum;
  - (c) respecting membership in an association, including requirements respecting qualifications for admission of members that are to be included in the bylaws of an association;
  - (d) respecting the making of bylaws by associations and the amendment or repeal of bylaws;
  - (e) respecting minimum requirements of matters to be included in the bylaws of associations;
  - (f) respecting applications made pursuant to clause 65(3)(a);
  - (g) respecting the manner and proportions in which the balance remaining after dissolution or wind-up of an association is to be paid pursuant to Section 65;
  - (h) respecting matters that the Inspector shall consider or conditions that apply to the exercise of the Inspector's discretion when the Inspector decides on applications made pursuant to subsection 65(3);
  - (i) prescribing associations or classes of associations that are non-profit associations for the purpose of Section 66;

- (j) respecting the manner and proportions in which the property remaining after dissolution of a non-profit association is to be distributed pursuant to Section 72;
- (k) respecting circumstances in which associations are deemed to be non-profit associations or to have been carrying on business as non-profit associations;
- (l) respecting the qualifications, powers, duties and election of directors;
- (m) prescribing director zones;
- (n) providing for vacancies in offices of associations;
- (o) respecting meetings of directors;
- (p) respecting annual and special meetings;
- (q) respecting shares and the disposition or transfer of shares;
- (r) respecting the maintaining of reserves and the disposition of net earnings;
- (s) prescribing the manner in which a reserve fund established pursuant to Section 69 must be invested;
- (t) prescribing notices, and publication of them;
- (u) respecting borrowing;
- (v) defining fiscal year;
- (w) respecting the corporate seal;
- (x) providing for the withdrawal and expulsion of members;
- (y) defining the scope of business activities;
- (z) determining the services to be provided by the Inspector and the Registrar;
- (aa) determining the fees to be charged for services rendered by the Inspector and the Registrar;
- (ab) generally for the better administration of this Act and the management and conduct of the affairs of associations.

(2) Regulations made pursuant to subsection (1) are regulations within the meaning of the *Regulations Act*. R.S., c. 98, s. 64; 2001, c. 41, s. 21.

#### Former Schedule

76 (1) The Minister may make regulations prescribing forms for the purposes of Section 6 and subsection 11(1).

(2) The forms contained in the Schedule to Chapter 28 of the Revised Statutes, 1989, are deemed to be prescribed pursuant to subsection (1) and to have been published in accordance with the *Regulations Act* and may be amended and repealed pursuant to this Section.

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

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CHAPTER C-60

**An Act Respecting the Provision  
of Coordinated Home Care Services  
in Nova Scotia**

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

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**Short title**

**1** This Act may be cited as the *Coordinated Home Care Act*. 1990, c. 6, s. 1.

**Interpretation**

**2** In this Act,  
“Advisory Committee” means the Provincial Home Care Advisory Committee;  
“Agency” means the Home Care Coordinating Agency;  
“Coordinated Home Care Program” means the coordinated delivery of a range of health, housing and social services to meet the needs of persons who require assistance or support in order to remain in their own homes or community or whose functioning without assistance or support is likely to deteriorate, making it impossible to stay in their own homes or community;  
“Minister” means the Minister of Health and Wellness. 1990, c. 6, s. 2.

**Supervision of Act**

**3** The Minister has the general supervision and management of this Act. 1990, c. 6, s. 3.

**Home Care Coordinating Agency**

**4 (1)** The Home Care Coordinating Agency is established.

(2) The Agency consists of the Ministers and the Deputy Ministers of Community Services, Health and Wellness, Municipal Affairs and Housing and Seniors and Long Term Care.

(3) The Minister is the Chair of the Agency. 1990, c. 6, s. 4.

#### Objects of Agency

5 The objects of the Agency are to

(a) provide for and ensure the delivery of a Coordinated Home Care Program for Nova Scotia's senior citizens, disabled persons and families at risk;

(b) oversee the singular and collective policies, procedures and services of the Departments of Community Services, Health and Wellness, Municipal Affairs and Housing and Housing Nova Scotia to ensure that they are complementary with the Government's overall commitment to provide coordinated home care services. 1990, c. 6, s. 5.

#### Meetings

6 The Agency shall meet at least twice a year. 1990, c. 6, s. 6.

#### Provincial Home Care Advisory Committee

7 (1) The Provincial Home Care Advisory Committee is established.

(2) The Advisory Committee consists of such persons as the Governor in Council determines. 1990, c. 6, s. 7.

#### Principal agencies

8 The principal agencies for entry to the Coordinated Home Care Program and for the coordination thereof, including intake, assessment and case management, are

(a) in the case of the Halifax Regional Municipality, the community care division of the department of social services for the Halifax Regional Municipality;

(b) in the case of all other municipalities, the homemaker agencies established pursuant to the *Homemakers Services Act*. 1990, c. 6, s. 8.

#### Personnel

9 The persons necessary for the administration of this Act and the regulations must be appointed in accordance with the *Civil Service Act*. 1990, c. 6, s. 9.

#### Regulations

10 (1) The Governor in Council may make regulations

(a) respecting the Advisory Committee, including appointments thereto;

(b) respecting standards for agencies and individuals providing coordinated home care;

(c) prescribing the conditions under which funds may be distributed by the Province for Coordinated Home Care Program services;

(d) prescribing eligibility criteria for admission to and discharge from the Coordinated Home Care Program;

(e) respecting the provision of attendant care to disabled persons;

(f) respecting the provision of services by such disciplines as the regulations specify;

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

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

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*, 1990, c. 6, s. 10.

CHAPTER C-61

**An Act to Consolidate  
Miscellaneous Provisions Respecting  
Certain Classes of Corporation**

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

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**Short title**

**1** This Act may be cited as the *Corporations Miscellaneous Provisions Act*.  
R.S., c. 100, s. 1.

## PART I

## HEAD OFFICE OF CERTAIN COMPANIES

**Application of Part**

2 This Part applies to every company incorporated by or under an Act of the Legislature, except the *Companies Act*, and applies to every such company, whether heretofore or hereafter incorporated, and notwithstanding that in any special or general Act of the Legislature enacted before May 28, 1921, there are provisions inconsistent with or contrary to this Part. R.S., c. 100, s. 3.

**Head office**

3 Every company to which this Part applies must have its head or principal office within the Province and not elsewhere. R.S., c. 100, s. 4.

## PART II

CHANGE OF NAME OF COMPANIES INCORPORATED  
UNDER SPECIAL CHARTER**Change of name**

4 The Governor in Council may, by order in council, upon the application of any company incorporated under and by a special Act of the Legislature, change the name of the company, and the change does not affect the rights, powers, franchises or existence of the company, but has the same effect as though accomplished by special Act of the Legislature. R.S., c. 100, s. 5.

**Fee**

5 Before the order in council is made, the company applying for the same shall pay to the Minister of Finance and Treasury Board a sum equal to the fee it would be required to pay in order to secure an Act of the Legislature making such change. R.S., c. 100, s. 6.

**Restriction on name change**

6 Nothing in this Part may be taken to authorize the name of any such company being changed so as to be the same as that of any other company incorporated under and by any other special Act of the Legislature or under the *Companies Act*. R.S., c. 100, s. 7.

**Notice of name change**

7 Notice of the change of name must be given by such company in the Royal Gazette and in one or more newspapers in the Province published in a county where the company is authorized to carry on business. R.S., c. 100, s. 8.

**Rights and obligations not affected**

8 The change of name does not in any way affect the rights, duties, liabilities and obligations of the company, nor affect any actions brought by or against the company under the original name, and such actions must go forward as if the name had not been changed, and judgment and execution may be entered by and against the company under the changed name. R.S., c. 100, s. 9.

## PART III

## DISMISSAL OF DIRECTORS OF COMPANIES

**Removal of directors**

**9** Notwithstanding any other Act, general or special, of the Province or the articles of association, or the bylaws of any company heretofore or hereafter incorporated under any general or special Act of the Province, any director or directors of any company to which the legislative jurisdiction of the Province extends, may be removed from office by a resolution passed at a special meeting of the shareholders of the company called for the purpose under the provisions of the articles of association or bylaws of the company respecting the calling of general meetings or on the requisition of or by shareholders of the company holding not less than one tenth of the issued share capital thereof, and passed by a three-fourths majority of the votes of the shareholders present or represented by proxy thereat and representing the majority of the shares in the company then issued and outstanding. R.S., c. 100, s. 10.

**Appointment of new directors**

**10 (1)** The power of removal may be exercised at any time and from time to time and another or other directors may be elected or appointed in the place and stead of the director or directors so removed from office, and such election or appointment may be made at the same meeting at which such resolution is passed or at another meeting duly called for the purpose.

**(2)** The person or persons so elected or appointed hold office during such time as the director or directors so removed would have held the same if the director or directors had not been removed. R.S., c. 100, s. 11.

## PART IV

## CONTRACTS

**“corporation” defined**

**11** In this Part, “corporation” includes any regional municipality, town or municipality of a county or district and any municipal or public corporation, as well as any private company. R.S., c. 100, s. 12.

**Seal**

**12 (1)** Every contract made or entered into by any corporation within the scope of its charter or Act of incorporation, under such conditions and circumstances and in such manner that the same would be valid and binding if the corporate seal were affixed thereto, is so valid and binding notwithstanding the failure or omission to affix a seal.

**(2)** This Section does not make valid any contract of a corporation that, where made by any person other than a corporation, would be invalid for want of a seal.

**(3)** The affixing of a seal to the contract of a corporation has the same effect as the affixing of a seal to the contract of an individual. R.S., c. 100, s. 13.

**Appointments and retainers**

**13** No appointment or retainer of an attorney or solicitor by any corporation is invalid or defective by reason that the same was not made under seal. R.S., c. 100, s. 14.

## PART V

REGISTRATION AND TRANSFER OF  
SHARES, BONDS, DEBENTURES, STOCKS  
AND OTHER SECURITIES OF CERTAIN COMPANIES**“company” defined**

**14** In this Part, “company” means a company to which this Part applies. R.S., c. 100, s. 15.

**Application of Part**

**15** This Part applies to every company incorporated by or under an Act of the Legislature, except the *Companies Act*, and applies to every such company, whether heretofore or hereafter incorporated, and notwithstanding that in any special or general Act of the Legislature enacted before May 28, 1921, there are provisions inconsistent with or contrary to this Part. R.S., c. 100, s. 16.

**Registers**

**16 (1)** Every company shall keep or cause to be kept within the Province in one or more books or in any other manner

(a) a register of its shareholders, in this Part called the “principal register of shareholders”;

(b) a register of the holders of bonds, debentures, stocks or other securities that have been or may hereafter be issued by the company and that are not validly transferable solely by the delivery thereof, in this Part called the “principal register of bondholders”.

**(2)** There must be entered in the principal register of shareholders the following particulars:

(a) the names and addresses and the occupations, if any, of the shareholders of the company, with the addition of a statement of the shares held by each and of the amount paid or agreed to be considered as paid on the shares of each shareholder;

(b) the date at which the name of any person was entered in the register as a shareholder;

(c) the date at which any person ceased to be a shareholder; and

(d) in the case of the transmission of shares by the death of the shareholder, the names and addresses and the occupations, if any, of the executors or administrators of the deceased.

**(3)** There must be entered in the principal register of bondholders the following particulars:

(a) the names and addresses and the occupations, if any, of the holders of the bonds, debentures, stocks or other securities that have been or may hereafter be issued by the company and that are not validly transferable solely by the delivery thereof;

(b) the date at which the name of any person was entered in the register as such holder;

(c) the date at which any person ceased to be such holder;

(d) in the case of the transmission of such bonds, debentures or other securities by the death of the holder thereof, the names and addresses and the occupations, if any, of the executors or administrators of the deceased.

(4) Any other register of shareholders of the company or any other register of holders of bonds, debentures, stocks or other securities issued by the company is a subsidiary and subordinate register kept for convenience only and no entry therein is valid or effectual unless and until the entry is also made in the principal register of shareholders or in the principal register of bondholders, as the case requires. R.S., c. 100, s. 17.

#### Requirements for valid transfer of shares

17 (1) No transfer and no transmission by death or otherwise of any shares of a company is valid, complete or effectual unless and until the entries in respect thereof required by this Part or otherwise have been made in the principal register of shareholders.

(2) No entries in any other register of shareholders is necessary to make such transfer or transmission valid, complete or effectual.

(3) Notwithstanding subsection (1), as to shares of a company from time to time listed and dealt with on any recognized stock exchange by means of scrip commonly in use endorsed in blank and transferable by delivery, such endorsement and delivery as between the transferor and the transferee constitutes a valid transfer while such shares are so listed. R.S., c. 100, s. 18.

#### Requirements for valid transfer of bonds

18 (1) No transfer and no transmission by death or otherwise of any bonds, debentures, stocks or other securities that have been or may hereafter be issued by a company and that are not validly transferable solely by the delivery thereof is valid, complete or effectual unless and until the entries in respect thereof required by this Part or otherwise have been made in the principal register of bondholders.

(2) No entries in any other register of holders of bonds, debentures, stocks or other securities issued by the company is necessary to make such transfer or transmission valid, complete or effectual. R.S., c. 100, s. 19.

#### Registers as evidence of contents

19 The principal register of shareholders and the principal register of bondholders is prima facie evidence of any matters by this Part directed or authorized to be inserted therein. R.S., c. 100, s. 20.

## PART VI

REISSUE OF BONDS BY CERTAIN  
JOINT STOCK COMPANIES**Application of Part**

**20 (1)** This Part applies to any company incorporated before April 22, 1910, under the laws of the Province, whether Chapter 79 of the Revised Statutes, Fifth Series, the former *Nova Scotia Joint Stock Companies' Act*, Chapter 128 of the Revised Statutes, 1900, the former *Nova Scotia Companies Act*, Chapter 19 of the Acts of 1921, the former *The Nova Scotia Companies Act, 1921*, or a special Act of the Legislature.

**(2)** This Part also applies to all transactions with respect to bonds of any company wherever incorporated issued, reissued or deposited to secure advances within the Province. R.S., c. 100, s. 21.

**Reissue**

**21 (1)** Where either before or after the passing of this Part a company has redeemed any bonds or debentures previously issued, the company, unless the special Act incorporating the company or the bylaws or the articles of association of the company or the conditions of issue expressly otherwise provide, or unless the bonds or debentures have been redeemed in pursuance of any obligation of the company to do so, and not being an obligation enforceable only by the person to whom the redeemed bonds or debentures were issued, or the person's assigns, has power, and is deemed always to have had power, to keep the bonds or debentures alive for the purpose of reissue.

**(2)** Where a company has purported to exercise such a power, the company has power, and is deemed always to have had power, to reissue the bonds or debentures, either by reissuing the same bonds or debentures, or by issuing other bonds or debentures in their place, and upon such a reissue the person entitled to the bonds or debentures has, and is deemed always to have had, the same rights and priorities as if the bonds or debentures had not previously been issued. R.S., c. 100, s. 22.

**Deemed reissue**

**22** Where, with the object of keeping bonds or debentures alive for the purpose of reissue, they have either before or after the passing of this Part been transferred to a nominee of the company, a transfer from that nominee is deemed to be a reissue for the purpose of this Section. R.S., c. 100, s. 23.

**Deposit of bonds not redemption**

**23** Where a company has, either before or after the passing of this Part, deposited any of its bonds or debentures to secure advances on current account or otherwise the bonds or debentures are not deemed to have been redeemed by reason only of the account of the company having ceased to be in debit while the bonds or debentures remained so deposited nor by reason of the repayment of the advances. R.S., c. 100, s. 24.

**Reissue not treated as new issue**

**24** The reissue of a bond or debenture, or the issue of another bond or debenture in its place, under this Part, whether made before or after the passing of this Part, may not be treated as the issue of a new bond or debenture for any purpose. R.S., c. 100, s. 25.

**Power to issue bonds not prejudiced**

**25** Nothing in this Part prejudices any power to issue bonds or debentures in the place of any bond or debenture paid off, or otherwise satisfied or extinguished, reserved to a company by its bonds or debentures, or the securities for the same. R.S., c. 100, s. 26.

## PART VII

VESTING OF PROPERTY OF DISSOLVED  
CORPORATIONS IN CROWN**Escheat**

**26 (1)** Where a corporation is dissolved, the lands, tenements and hereditaments situate in the Province of which the corporation was seised, or to which it was entitled at the time of its dissolution, is for all purposes deemed to escheat to the Crown in right of the Province and the Attorney General shall cause possession thereof to be taken in the name of the Crown.

**(2)** The proceedings in the action may be in all respects similar to those in other actions for the recovery of land. R.S., c. 100, s. 27.

**Bona vacantia**

**27** Where a corporation is dissolved, all personal property and rights whatsoever situate in the Province, vested in or held in trust for the corporation at the time of its dissolution are deemed to be *bona vacantia* and accordingly belong to and vest in the Crown in right of the Province. R.S., c. 100, s. 28.

**Transfer from or payment by Crown**

**28 (1)** Where it is made to appear to the satisfaction of the Governor in Council upon the report of the Attorney General that by reason of

- (a) the dealings or relationship of any person with a dissolved corporation; or
- (b) any other circumstance,

any lands, tenements, hereditaments, personal property or rights of such corporation should be conveyed, transferred or assigned to such person, the Governor in Council, upon such terms and conditions, if any, as the Governor in Council sees fit, may convey, transfer or assign to such person any such lands, tenements, hereditaments, personal property or rights that have accrued to the Crown by reason of the dissolution of such corporation.

**(2)** Where lands, tenements, hereditaments, personal property or rights having been disposed of by the Crown pursuant to subsection (1), the Governor in Council may pay out of the General Revenue Fund to such person the amount of the net proceeds realized on such disposal. R.S., c. 100, s. 29.

## PART VIII

## GENERAL

**“company” defined**

**29** In this Part, “company” means a company or corporation to which this Part applies. R.S., c. 100, s. 30.

**Application of Part**

**30** This Part does not apply to any company that is incorporated under the *Companies Act* or the former *Nova Scotia Joint Stock Companies’ Act*, but does apply to every other company that is incorporated by or under the authority of an Act of the Legislature, unless the Act by or under the authority of which the company is incorporated contains other provisions in that behalf. R.S., c. 100, s. 31.

**Powers of company**

**31 (1)** Every company is capable in its corporate name to sue and be sued, to prosecute and defend actions, to have a common seal which it may alter at pleasure, to elect in such manner as it deems proper all necessary officers, and to fix their compensation and to define their duties, and to make bylaws and regulations, not contrary to law nor repugnant to the charter or Act by which the company is created, for its own government and the due management of its affairs.

**(2)** Except where inconsistent with any Act of the Legislature of the Province, every company, whether incorporated before or after the enactment of this subsection, may not have its corporate existence and capacity limited to corporate existence and capacity within the Province, but every such company, except where inconsistent as aforesaid, has and is deemed from its incorporation to have had corporate existence and capacity anywhere outside of the Province, and is capable

(a) of exercising all its functions as an incorporated company anywhere outside of the Province; and

(b) of accepting and receiving from any competent authority outside of the Province all or any rights and powers necessary to enable it to do outside of the Province any act or thing that under the Act by or under the authority of which the company is incorporated, it has right or power to do within the Province.

**(3)** Subsection (2) applies to a company notwithstanding that there is no express provision in the Act, by or under the authority of which the company is incorporated, allowing it to exist for the purpose of carrying on business outside of the Province or allowing it to accept and receive extra-provincial rights and powers and notwithstanding any inference to be derived from the name of the company. R.S., c. 100, s. 32.

**Powers of company**

**32** Every company may, by its bylaws, determine the manner of calling and conducting meetings, the number of members that constitute a quorum, the number of shares that entitle the members to one or more votes, the mode of voting by proxy, the mode of selling shares for the non-payment of instalments and of transferring shares generally, the tenure of office of the several officers and the purchase, conveyance and sale of its real and personal property, and may annex penal-

ties to its bylaws not exceeding in any case the sum of \$20 for any one offence. R.S., c. 100, s. 33.

#### **First meeting of company**

**33** The first meeting of every company must be called by notice signed by any one or more of the persons named as incorporators in the charter or Act of incorporation and setting forth the time, place and purpose of the meeting, and such notice must, seven days at least before the meeting, be delivered to each member, left at the member's place of residence or published in some newspaper of the county in which the company is established or proposed to be established, or where its principal place of business is situated or proposed to be situated, or where there is no newspaper in the county, then in two newspapers published in the Halifax Regional Municipality. R.S., c. 100, s. 34.

#### **Calling of meeting by members**

**34** Whenever by reason of the death, absence or disability of the officers of any company there is no person authorized to call or preside at a meeting of the members thereof, any three or more of the members may call such meeting by giving the notice as required by law. R.S., c. 100, s. 35.

#### **Election of chair and officers**

**35** The members when so assembled may choose a chair and may elect officers to fill all vacancies then existing, and may transact such other business as might by law be transacted at a regular meeting of the company. R.S., c. 100, s. 36.

#### **Shares deemed personal property**

**36** The shares or stock of every company is deemed to be personal property for all purposes. R.S., c. 100, s. 37.

#### **Expiry of charter**

**37** Every charter or Act of incorporation expires unless the company thereby incorporated goes into operation within three years from the passing thereof. R.S., c. 100, s. 38.

#### **Continuation after charter expires**

**38** Every company, the charter or Act of incorporation of which, after such company has gone into operation, expires or is annulled by forfeiture or otherwise, is nevertheless continued as a body corporate for the term of three years after the time when the charter or Act of incorporation has so expired or been annulled, for the purpose of prosecuting and defending actions by or against it and of enabling it to settle and close its business, to dispose of its property and to divide its capital stock, but not for the purpose of continuing the business for which the company was established. R.S., c. 100, s. 39.

#### **Appointment of trustees**

**39** When the charter of any company so expires or is annulled, the Supreme Court of Nova Scotia, on application of any creditor of the company or of any member thereof, at any time within the three years, may appoint a trustee or trustees to take charge of the estate and effects of the company and to collect the debts and property due and belonging thereto, with power to prosecute and defend

actions in the name of the company, to appoint agents and to do all other acts that might be done by the company that are necessary for the final settlement of the unfinished business of the company, and the power of the trustees may be continued beyond the three years if the Court thinks necessary. R.S., c. 100, s. 40.

#### **Directors personally liable**

**40** The directors or board of managers of any company, the liability of whose members is limited by the charter or Act of incorporation, are in all cases personally liable for any debt incurred by them on account of the company beyond the amount of the stock subscribed without the sanction of the company obtained at a meeting thereof held in accordance with the bylaws, but this Section does not extend to insurance companies. R.S., c. 100, s. 41.

#### **Acts of company valid**

**41** The acts of any company performed within the scope of its charter or Act of incorporation are valid, notwithstanding they are not done under or authenticated by the seal of the company. R.S., c. 100, s. 42.

#### **Deemed submission by arbitration**

**42** Whenever by any charter or Act of incorporation it is provided that any dispute or matter of controversy in which the company is interested or any damages to which it is liable must be settled or ascertained by arbitration, such provision is deemed a "submission to arbitration" within the meaning of that expression in the *Arbitration Act*. R.S., c. 100, s. 43.

#### **Company not bound to execute trust**

**43** No company is bound to see to the execution of any trust, whether express, implied or constructive, in respect of any of its shares, and the receipt of a shareholder in whose name the same stands on the books of the company is a valid and binding discharge to the company for any dividend or money payable in respect of such share, whether or not notice of the trust has been given to the company, and the company is not bound to see to the application of the money paid on such receipt. R.S., c. 100, s. 44.

#### **Commission for purchase of shares**

**44 (1)** Any company may pay a commission to any person in consideration of the person subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or for procuring or agreeing to procure subscriptions for any shares in the company, if such commission paid or agreed to be paid does not exceed 10% of the price at which such shares are sold.

**(2)** Save as aforesaid, no company may apply any of its shares or capital money, either directly or indirectly, in payment of any commission, discounts or allowances to any person in consideration of the person subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or procuring or agreeing to procure subscriptions, whether absolutely or conditionally, for any shares of the company, whether the shares or money be so applied by being added to the purchase money of any property acquired by the company, or to the contract price of any work to be executed for the company, or the money being paid out of the nominal purchase money or contract price or otherwise. R.S., c. 100, s. 45.

**Reduction of share capital and redemption of preference shares**

**45 (1)** Subject to confirmation by the Supreme Court of Nova Scotia, or a judge thereof, a company may by resolution passed by a majority of not less than three fourths of such members of the company entitled to vote as are present in person or by proxy, where proxies are allowed, at any general meeting of which notice specifying the intention to propose the resolution has been duly given and such resolution has been confirmed by a majority of such members entitled to vote as are present in person or by proxy (if proxies are allowed) at a subsequent general meeting of which notice has been duly given and held at an interval of not less than 14 days nor more than one month from the date of the first meeting, reduce its share capital in any way and, in particular, without prejudice to the generality of the foregoing power, may

(a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up;

(b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital that is lost or unrepresented by available assets; or

(c) either with or without extinguishing or reducing liability on any of its shares, pay off, either by payment in cash or by distributing any of the company's property *in specie*, any paid-up share capital that is in excess of the wants of the company.

**(2)** Where any company has hitherto or hereafter issues redeemable preference shares or has been or is hereafter authorized to do so by an Act of the Legislature, it may redeem all or any of such preference shares in the manner provided for by the terms of the issue thereof and may reduce the amount of the share capital accordingly, but no such redemption of shares may be made, nor may any such reduction of capital be effective, until an order of the Supreme Court of Nova Scotia is obtained, and filed with the Registrar of Joint Stock Companies appointed under the *Companies Act*. R.S., c. 100, s. 46.

**Court order**

**46 (1)** Where a company has passed and confirmed a resolution for reducing its share capital otherwise than by redemption of preference shares, it may apply by petition to the Supreme Court of Nova Scotia for an order confirming the reduction.

**(2)** Where a company authorized to issue redeemable preference shares has passed such a resolution or taken such other action for the redemption of such shares as is prescribed by the terms of the issue thereof, it may then apply by petition to the Court for an order confirming the resolution or other action and the reduction of share capital thereby entailed. R.S., c. 100, s. 47.

**Company name to indicate reduction**

**47 (1)** On and from the passing and confirmation by a company of a resolution for reducing share capital, or where the reduction does not involve either the diminution of any liability with respect to unpaid share capital or the payment to any shareholder of any paid-up share capital or where a company has issued redeemable preference shares, or has been or is hereafter authorized to do so by an Act of the Legislature, then, on and from the presentation of the petition for confirming the reduction or redemption and reduction, the company shall add to its

name, until such date as the Supreme Court of Nova Scotia may fix, the words “and reduced” as the last words in its name and those words are until that date deemed to be part of the name of the company.

(2) Where

(a) the reduction does not involve either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital;

(b) preference shares are to be redeemed out of profits of the company that would otherwise be available for dividends; or

(c) new shares of any class are to be issued in substitution for preference shares and any premium that may be provided for in case of redemption,

the Court may, where it thinks expedient, dispense altogether with the addition of the words “and reduced”. R.S., c. 100, s. 48.

**Creditor objection to reduction**

**48** (1) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case if the Supreme Court of Nova Scotia so directs, every creditor of the company who at the date fixed by the Court is entitled to any debt or claim that, where that date was the commencement of the winding up of the company, would be admissible in proof against the company, is entitled to object to the reduction.

(2) Where the reduction of the capital of a company does not involve either the diminution of any liability in respect of unpaid capital or the payment to any shareholder of any paid-up capital or where the reduction of capital is that entailed by the purchase or redemption of preference shares out of its profits available for dividends, the creditors of the company are not, unless the Court otherwise directs, entitled to object or required to consent to the reduction.

(3) The Court shall settle a list of creditors so entitled to object and for that purpose shall ascertain, so far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction.

(4) Where a creditor entered on the list whose debt or claim is not discharged or determined does not consent to the reduction, the Court may, where it thinks fit, dispense with the consent of that creditor, on the company securing payment of debt or claim by appropriating, as the Court may direct, the following amount:

(a) where the company admits the full amount of the creditor’s debt or claim or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim;

(b) where the company does not admit or is not willing to provide for the full amount of the debt or claim, or where the amount is contingent or not ascertained, then an amount fixed by the Court

after the like inquiry and adjudication as if the company were being wound up by the Court. R.S., c. 100, s. 49.

#### **Court may confirm reduction**

**49** The Supreme Court of Nova Scotia, where satisfied, with respect to every creditor of the company who, under this Part, is entitled to object to the reduction, that either a creditor's consent to the reduction has been obtained or the creditor's debt or claim has been discharged or has determined, or has been secured, may make an order confirming the reduction, or redemption and reduction, on such terms and conditions as it thinks fit. R.S., c. 100, s. 50.

#### **Registrar to file order**

**50 (1)** Upon production to the Registrar of Joint Stock Companies of an order of the Supreme Court of Nova Scotia confirming the reduction of the share capital of a company, or the redemption of preference shares and the reduction of capital thereby entailed, and the delivery to the Registrar of a certified copy of the order and of a minute, approved by the Court, showing with respect to the share capital of the company, as altered by the order, the amount of the share capital, the number of shares into which it is to be divided, the amount of each share and the amount, if any, at the date of the registration deemed to be paid up on each share, the Registrar shall file the order and the minute.

**(2)** On the filing and not before, the resolution for reducing share capital, or the resolution or other action of the company for redeeming preference shares and reducing capital accordingly, as confirmed by the order so registered takes effect.

**(3)** Notice of the filing must be published in such manner as the Court may direct.

**(4)** The Registrar of Joint Stock Companies shall certify the filing of the order and minute, and the Registrar's certificate is conclusive evidence that all the requirements of this Act with respect to reduction of share capital, or with respect to the redemption of preference shares and reduction of capital thereby entailed, have been complied with and that the share capital of the company is such as stated in the minute. R.S., c. 100, s. 51.

#### **Contribution to settle debts**

**51 (1)** A member of the company, past or present, is not liable in respect of any share to any call or contribution exceeding in amount the difference, if any, between the amount paid, or, as the case may be, the reduced amount, if any, that is deemed to have been paid, on the share and the amount of the share as fixed by the minute, provided that where any creditor, entitled in respect of any debt or claim to object to the reduction of share capital, is, by reason of ignorance of the proceedings for reduction, or of their nature and effect with respect to the creditor's claim, not entered on the list of creditors, and, after the reduction, the company is unable, within the meaning of the provisions of any enactment with respect to winding up by the Supreme Court of Nova Scotia, to pay the amount of the member's debt or claim, then

**(a)** every person who was a member of the company, at the date of the registration of the order for reduction and minute, is

liable to contribute for the payment of that debt or claim an amount not exceeding the amount that the person would have been liable to contribute if the company had commenced to be wound up on the day before that registration; and

(b) where the company is wound up, the Court, on the application of any such creditor, and proof of the creditor's ignorance as aforesaid may, where it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list as if they were ordinary contributories in the winding up.

(2) Nothing in this Section affects the rights of the contributories among themselves. R.S., c. 100, s. 52.

#### **Penalty for concealing name of creditor**

52 Where any director, manager or officer of the company wilfully conceals the name of any creditor entitled to object to the reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor, or where any director or manager of the company aids or abets in or is privy to any such concealment or misrepresentation as aforesaid, every such director, manager or officer is liable to a penalty not exceeding \$500. R.S., c. 100, s. 53.

#### **Publication of reasons for reduction**

53 In any case of reduction of share capital, the Supreme Court of Nova Scotia may require the company to publish as the Court directs the reasons for reduction, or such other information in regard thereto as the Court may think expedient with a view to give proper information to the public, and, where the Court thinks fit, the causes that led to the reduction. R.S., c. 100, s. 54.

#### **Court may summon meeting of creditors**

54 (1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or between the company and its members or any class of them, the Supreme Court of Nova Scotia may, on the application in a summary way of the company or of any creditor or member of the company or, in the case of a company being wound up under the *Companies Winding Up Act*, of the liquidator, order a meeting of the creditors or class of creditors or the members of the company or class of members, as the case may be, to be summoned in such manner as the Court directs.

(2) Where a majority in number representing three fourths in value of the creditors or class of creditors or members or class of members, as the case may be, present either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement is, where sanctioned by the Court, binding on all the creditors or class of creditors or on the members or class of members, as the case may be, and also on the company, or in the case of a company in the course of being wound up under the *Companies Winding Up Act*, on the liquidator, members and contributories of the company. R.S., c. 100, s. 55.

CHAPTER C-62

**An Act Respecting  
the Registration of Corporations**

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

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**Short title**

**1** This Act may be cited as the *Corporations Registration Act*. R.S., c. 101, s. 1.

**Interpretation**

**2** In this Act,

“bank” means a corporation incorporated for the purpose of doing a banking business or the business of a savings bank;

“carry on business” means the transaction of any of the ordinary business of a corporation, whether by means of an employee or an agent and whether or not the corporation has a resident agent or representative or a warehouse, office or place of business in the Province;

“corporation” means a body corporate that is a Nova Scotia corporation, a federal corporation, an extra-provincial corporation or a foreign corporation;

“extra-provincial corporation” means a body corporate that is incorporated under the authority of an Act of a province of Canada other than the Province and has gain for its purpose or object;

“federal corporation” means a body corporate that is incorporated by or under the authority of an Act of the Parliament of Canada and has gain for its purpose or object;

“finance company” includes a corporation whose main or chief business is buying or selling and dealing in mortgages, conditional sales agreements, lien notes, bills or other similar obligations or property, or advancing or lending money and taking as security for the repayment thereof a mortgage of chattels;

“foreign corporation” means a body corporate that is incorporated otherwise than by or under the authority of an Act of the Parliament of Canada or under the authority of an Act of a province of Canada and has gain for its purpose or object;

“holding corporation” includes any corporation as hereinbefore defined that is formed for the purpose of acquiring and holding all the shares or a controlling interest therein of other companies, that actually does acquire or hold all such shares or a controlling interest therein and that does not otherwise engage in any trade or business;

“loan company” means every corporation not being a chartered bank that carries on business for the purpose, solely or among other purposes, of lending money on real estate, or investing money in real estate securities, or lending on or investing in mortgages of personal property;

“Nova Scotia corporation” means a body corporate that is incorporated by or under the authority of an Act of the Legislature and has gain for its purpose or object;

“Registrar” means the Registrar of Joint Stock Companies, and includes the Deputy Registrar of Joint Stock Companies;

“trust company” means a corporation authorized to

(a) act as executor, administrator, trustee, liquidator, receiver, assignee, guardian or committee;

(b) receive on deposit deeds, wills or other valuable papers or securities for money or jewellery, plate or other personal property and guarantee the safekeeping of the same;

(c) act as attorney or agent for the transaction of any business or class of business or the collection of money or the management of property of any kind;

(d) act as agent for the purpose of issuing or countersigning certificates of stock, bonds or other obligations of any company or municipal or school corporation and receive, invest and manage any sinking fund therefor; or

(e) guarantee any investment made by it as agent or otherwise. R.S., c. 101, s. 2; 2019, c. 4, s. 15.

### Application of Act

**3 (1)** This Act applies to corporations generally.

**(2)** Notwithstanding subsection (1), this Act does not apply to a corporation that is incorporated and registered pursuant to the laws of another province of Canada designated by the Governor in Council.

(3) The Governor in Council may designate a province of Canada for the purpose of subsection (2) where that province provides the same exemption from registration to a corporation incorporated pursuant to the *Companies Act* and registered pursuant to this Act as provided by subsection (2).

(4) The exercise by the Governor in Council of the authority contained in subsection (3) is a regulation within the meaning of the *Regulations Act*. R.S., c. 101, s. 3; 1993, c. 18, s. 1; 1996, c. 23, s. 7.

### Certificate

4 Any corporation may have a certificate, in this Act called a “certificate of registration”, issued to it by the Registrar as hereinafter provided. R.S., c. 101, s. 4.

### Issue of certificate

5 (1) The Registrar shall, unless otherwise provided in this Act, issue a certificate of registration to

(a) any federal corporation, any extra-provincial corporation and any foreign corporation that files with the Registrar a statement as required by Section 8; and

(b) any Nova Scotia corporation that applies for the issue of a certificate of registration.

(2) The certificate of registration must state that the corporation is registered under this Act and must be certified by the Registrar.

(3) Subject to subsection (5), there must be paid to the Registrar, for the certificate of registration, a fee, the amount of which must be the same as that hereinafter provided in respect to annual registration fees.

(4) Subject to subsection (5), the fee to be paid to the Registrar for the certificate of registration must be the prorated portion of the fee incurred from the month of registration until the next anniversary month of incorporation based on the annual fees set out in Section 12.

(5) Notwithstanding subsection (3), no fee for a certificate of registration issued on or after January 1, 2019, is payable by

(a) a Nova Scotia corporation upon incorporation;

(b) a corporation issued a certificate of amalgamation under the *Companies Act* upon amalgamation; or

(c) a corporation issued a certificate of continuance under the *Companies Act* upon continuance.

(6) Every company holding a certificate of incorporation under the *Companies Act* must hold a certificate of registration under this Act. R.S., c. 101, s. 5; 2002, c. 5, s. 6; 2004, c. 3, s. 4; 2007, c. 9, s. 5; 2018, c. 32, s. 1; 2019, c. 4, s. 16; 2019, c. 27, s. 29.

### Identical name prohibited

6 Notwithstanding that a federal corporation, an extra-provincial corporation or a foreign corporation has been issued a certificate of registration pursu-

ant to Section 5, the corporation shall not carry on business under a name identical with that of

- (a) any other subsisting corporation that has a certificate of registration issued pursuant to Section 5;
- (b) any subsisting partnership within the meaning of the *Partnerships and Business Names Registration Act* that has a certificate of registration issued pursuant to that Act; or
- (c) an individual,

or so nearly resembling the same as to be calculated to deceive, except in a case in which such corporation, partnership or individual testifies consent in such manner as the Registrar requires. R.S., c. 101, s. 6; 2019, c. 4, s. 17.

#### Revocation of certificate

- 7 (1) Where a corporation holding a certificate of registration
- (a) fails to comply with any of the requirements of this Act; or
  - (b) requests that its certificate of registration be revoked,

the Registrar may revoke its certificate of registration and shall then cause notice of such revocation to be published in the Royal Gazette.

(2) Where a certificate of registration is so revoked the Registrar may withhold the issue of another certificate of registration in respect to such corporation until it complies with all or any of the requirements of this Act in respect to which it is in default, and until it pays to the Registrar for such certificate of registration, a fee, the amount of which must be the same as that hereinafter provided in respect to annual registration fees. R.S., c. 101, s. 7.

#### Statement to be filed with Registrar

8 Every federal corporation, every extra-provincial corporation and every foreign corporation shall, before a certificate of registration is issued to it, file with the Registrar a statement verified under oath by one of its principal officers showing

- (a) its corporate name;
- (b) when, where and under what special or general Act it was incorporated;
- (c) where its head office is situated;
- (d) the kind of business intended to be carried on in the Province or, in the case of a federal corporation, when it commenced business in the Province;
- (e) the names of its directors and officers. R.S., c. 101, s. 8; 2019, c. 4, s. 18.

#### Recognized agent

9 (1) Every corporation holding a certificate of registration shall appoint and have a recognized agent resident within the Province, service upon whom of any order, summons, process, notice or other document is deemed to be

sufficient service upon the corporation, and where any corporation fails to appoint and have such agent, it shall be liable to a penalty not exceeding \$100.

(2) A statement showing the name and address of such agent and from time to time a statement showing any change of such agent or agent's address, must be filed with the Registrar, and until such statement is so filed a corporation is deemed not to have complied with the provision of this Section with respect to appointing and having such agent.

(3) Where a corporation has no such agent or the agent cannot be found or is absent, any order, summons, process, notice or other document may be served on any officer or on any employee of the corporation or, in case there is no such officer or employee or such officer or employee cannot be found or is absent, may be posted in a conspicuous place on any land or building owned or occupied by the corporation and such service or posting is deemed to be sufficient service upon the corporation. R.S., c. 101, s. 9.

#### **Annual statement**

**10 (1)** Every corporation holding a certificate of registration shall, annually in the month during which the anniversary of the incorporation of the corporation occurs, file with the Registrar a statement showing the name of its recognized agent in the Province, the names of its directors and of its officers and such other information as the Registrar requires.

(2) Instead of filing the statement required by subsection (1), a federal corporation, extra-provincial corporation or foreign corporation may file with the Registrar a copy of the annual statement or similar document required to be filed in the jurisdiction in which the corporation is incorporated if such statement or document includes all of the information required to be included in a statement filed pursuant to subsection (1).

(3) The statement required by subsection (1) or (2) must be signed by the recognized agent of the corporation resident within the Province or, with the consent in writing of the Registrar, by the secretary-treasurer or other officer of the corporation on having knowledge of the facts. R.S., c. 101, s. 10; 2019, c. 4, s. 19.

#### **Statement filed at request of Registrar**

**11 (1)** Every corporation holding a certificate of registration shall file a statement with the Registrar, whenever a written request is made by the Registrar therefor, showing

- (a) the names and addresses of all persons who are shareholders of the corporation and the number of shares held by each of them;
- (b) the amount of the capital of the corporation and the number of shares into which it is divided;
- (c) the number of shares taken from the commencement of the corporation up to the date of the statement;
- (d) the amount of calls made on each share;
- (e) the total amount of calls received;

- (f) the total amount of calls unpaid;
- (g) the total number of shares forfeited;
- (h) the names and addresses of the persons who have ceased to be shareholders within 12 months next preceding the date of such statement, and the number of shares held by each of them; and
- (i) such other information as the Registrar requires.

(2) The statement must be verified under oath by one of the principal officers of the corporation and must be filed as aforesaid within one month from the date of such written request. R.S., c. 101, s. 11; 2019, c. 27, s. 30.

### Fees

12 (1) Every corporation holding a certificate of registration shall, annually in the month during which the anniversary of the incorporation of the corporation occurs, pay to the Registrar a fee, in this Act called an “annual registration fee” as set out in this Section.

(2) Every unlimited company holding a certificate of registration under the *Companies Act* shall, annually in the month during which the anniversary of the incorporation of the unlimited company occurs, pay to the Registrar the annual registration tax set out in this Section.

(3) In the case of a corporation limited by guarantee under the *Companies Act*, the amount of the fee is \$37.40 or such lesser amount as may be determined by the Governor in Council.

(4) In the case of a Nova Scotia corporation, the amount of the fee is \$118.35.

(5) In the case of an extra-provincial corporation, the amount of the fee is nil.

(6) In the case of a federal corporation, the amount of the fee is \$274.10.

(7) In the case of a foreign corporation, the amount of the fee is \$274.10.

(8) In the case of a corporation carrying on the business of insurance, the amount of the fee is \$336.40.

(9) In the case of a mutual or other corporation having no specified nominal capital, other than a corporation to which subsection (3) or (10) applies, the amount of the fee is determined by the Governor in Council.

(10) An unlimited company incorporated under the *Companies Act* shall pay an annual registration tax in the amount of \$1,144.90 and that tax is in substitution for the annual registration fee contained in subsection (4).

(11) This Section does not apply to any corporation that is incorporated under the *Cemetery Companies Act* or the *Rural Telephone Act* or to any corporation to which the *Co-operative Associations Act* applies.

(12) Notwithstanding subsection (8) or any other provision of this Act, the Governor in Council may, with respect to corporations now or hereafter carrying on the business of insurance in the Province under the *Insurance Act*, fix and determine the amount of the annual registration fee payable by corporations carrying on

- (a) the business of life insurance;
- (b) the business of fire insurance; or
- (c) insurance business other than life or fire,

provided, however, that no corporation carrying on one or more of the aforesaid businesses of insurance shall pay an annual registration fee in excess of \$336.40.

(13) Notwithstanding any other provision of this Act, the annual registration fee payable by a corporation that is a bank, finance company, loan company or trust company is \$535.75 provided that the Governor in Council may reduce the annual registration fee payable under this subsection to such sum as the Governor in Council thinks just, having regard to the nature and importance of the business of the corporation in the Province.

(14) The Governor in Council may reduce the annual fee payable under this Section by a mining, oil or prospecting company engaged solely in prospecting for minerals or oils while such company is so engaged. R.S., c. 101, s. 12; 2002, c. 5, s. 7; 2004, c. 3, s. 5; 2007, c. 9, s. 6; 2008, c. 2, s. 2; 2009, c. 5, s. 3; 2011, c. 8, s. 3; 2013, c. 3, s. 5; 2015, c. 6, s. 5; 2019, c. 4, s. 20; 2023, c. 2, s. 2.

#### **Penalty for not holding certificate**

13 (1) Where any corporation does or carries on in the Province any part of its business while it does not hold a certificate of registration that is in force,

- (a) such corporation is liable to a penalty of \$50 for every day on which it so does or carries on any part of its business;
- (b) every director, manager, secretary, agent, traveller or salesperson of the corporation, who, with notice that the corporation does not hold a certificate of registration that is in force, transacts in the Province any part of the business of the corporation, is, for every day on which the person so transacts the same, liable to a penalty of \$50.

(2) This Section does not apply to a federal corporation until the expiration of one month after its commencing to carry on business in the Province. R.S., c. 101, s. 13; 2019, c. 4, s. 21.

#### **Burden of proof**

14 The onus of proving that a corporation has not carried on or is not carrying on business in the Province within the meaning of this Act, has not gain for its purpose or object and holds a certificate of registration that is in force is, in any prosecution or other proceedings for an offence against this Act, upon the defendant. R.S., c. 101, s. 14.

**Inspection of books**

**15** The books and accounts of every corporation holding a certificate of registration must at all times be open to the inspection of the Registrar or of such person as the Registrar appoints to inspect the same. R.S., c. 101, s. 15.

**Fees part of general revenue**

**16** All fees paid to the Registrar in pursuance of this Act form part of the general revenue of the Province. R.S., c. 101, s. 16.

**Restriction on bringing court action**

**17 (1)** Unless and until a corporation holds a certificate of registration that is in force, it is not capable of bringing or maintaining any action, suit or other proceeding in any court in the Province in respect to any contract made in whole or in part in the Province in connection with any part of its business done or carried on in the Province while it did not hold a certificate of registration that was in force, provided, however, that this Section does not apply to any company incorporated by or under the authority of an Act of the Parliament of Canada or by or under the authority of an Act of the Legislature.

**(2)** An assignment of a debt or any chose in action by a corporation not holding a certificate of registration that is in force to an individual or a corporation holding a certificate of registration that is in force does not enable the assignee or anyone claiming through or under the assignee to bring or maintain any such action, suit or proceeding in any court in the Province based on the subject of the assignment. R.S., c. 101, s. 17.

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CHAPTER C-63

**An Act Respecting  
the Provision of Correctional Services**

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

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**Short title**

**1** This Act may be cited as the *Correctional Services Act*. 2005, c. 37, s. 1.

**Interpretation**

**2** In this Act,

“attendance centre” means a community-based facility for the delivery of correctional services;

“committal order” means

(a) a court order, including an order of remand;

(b) an order issued by a Provincial Director under the *Youth Criminal Justice Act* (Canada); or

(c) a prescribed order,

for the committal of a person to a correctional facility or a penitentiary;

“community corrections” means community-based correctional services that are provided by or authorized by the Correctional Services Division;

“conditional release” means the temporary release, with conditions, from custody of an offender who is serving a sentence of imprisonment pursuant to an enactment;

“contraband” means any unauthorized substance or property in or on the property of a correctional facility or on any person in a correctional facility;

“correctional facility” means a place designated or established under this Act or the *Youth Criminal Justice Act* (Canada) for the custody of offenders and includes any land in connection with it, but does not include a facility or penitentiary;

“correctional service” means a service or program provided by the Correctional Services Division for the assessment, supervision, custody, control, rehabilitation or reintegration of offenders;

“Correctional Services Division” means the Correctional Services Division of the Department of Justice;

“court order” means

(a) an order issued by a court for the custody or supervision of an offender by the Correctional Services Division; or

(b) in the case of a committal order, an order for the committal of a person to a correctional facility or penitentiary;

“custody” means the detention, care and control of an offender pursuant to a committal order

(a) in a correctional facility; or

(b) where an offender is away from a correctional facility, in the continuous control of an employee;

“electronic supervision” means supervision by an employee, device, system or contracted service using electronic technology that monitors, tracks or records the location, movement, activity, communications, specific behaviour or biometrics of an offender;

“employee” means a person employed by the Correctional Services Division to perform correctional services, but does not include a volunteer or a health-services professional;

“Executive Director” means the Executive Director appointed under this Act;

“health-services professional” means

(a) a medical practitioner;

(b) a nurse;

(c) a licensed practical nurse;

- (d) a paramedic;
- (e) a social worker;
- (f) an occupational therapist;
- (g) a psychologist; or
- (h) other health-services professional designated by regulation,

who is licensed and registered to practise in the Province and is a staff member of a health authority, as defined by the *Health Authorities Act*;

“inspector” means an inspector appointed under this Act;

“intoxicant” means a substance that, where taken into the body of a person, has the potential to impair or alter judgement, behaviour, the capacity to recognize reality or meet the demands of life, but does not include over-the-counter medication, caffeine, nicotine or any authorized medication used in accordance with instructions given by an employee or health-services professional;

“Minister” means the Minister of Justice;

“offence” includes the breach or contravention of any Act of the Parliament of Canada, of the Province or any other province of Canada or any municipal regulation or bylaw, if the breach or contravention may result in prosecution;

“offender” means a person who, pursuant to a court order, is in custody or under the supervision of the Correctional Services Division, and includes young persons as defined by the *Youth Criminal Justice Act* (Canada);

“open custody” means a place designated by the Minister pursuant to the *Youth Criminal Justice Act* (Canada) or subsection 24.1(1) of the *Young Offenders Act* (Canada) and operated by the Correctional Services Division;

“policies and procedures” means policies and procedures established under Section 15 and the regulations;

“post order” means written instructions setting out an employee’s responsibilities at a specific location;

“prescribed” means prescribed by the regulations;

“probation officer” means a probation officer appointed under this Act;

“responsible official” means

(a) in the case of an adult offender, the responsible official of the provincial health authority, as defined by the *Health Authorities Act*, in charge of health services for adult offenders in custody; and

(b) in the case of a young person, the responsible official of the IWK Health Centre in charge of health services for young persons in custody;

“rules” means rules made pursuant to this Act or the regulations;

“secure custody” means a place designated by the Minister pursuant to the *Youth Criminal Justice Act* (Canada) or subsection 24.1(1) of the

*Young Offenders Act* (Canada) and operated by the Correctional Services Division;

“standard operating procedures” means written instructions of the superintendent issued under Section 40;

“strip search” means the removal or rearrangement of a person’s clothing to permit visual inspection of the body but does not include a manual examination of the person’s body cavity;

“superintendent” means the superintendent of a correctional facility appointed under this Act;

“supervision” means the monitoring or overseeing of an offender who

(a) is the subject of a court order that requires the offender to be under the supervision of or report to a probation officer; or

(b) is on conditional release under the supervision of an employee;

“volunteer” means a volunteer who is appointed under this Act, and includes a student on a student placement. 2005, c. 37, s. 2; 2014, c. 32, s. 107; 2014, c. 46, s. 1.

## PART I

### ADMINISTRATION

#### MINISTER

#### Minister

- 3** (1) The Minister may
- (a) establish correctional facilities;
  - (b) designate or remove the designation of any place as a correctional facility;
  - (c) enter into an agreement with a municipality respecting the conveyance or leasing of a correctional facility;
  - (d) designate a correctional facility as a correctional facility for
    - (i) housing a specific group or classification of offenders,
    - (ii) open custody, secure custody or temporary detention,
    - (iii) the purpose of any provision of this Act or any enactment;
  - (e) enter into an agreement with the Government of Canada, a province of Canada, a municipality, a person, a partnership or an unincorporated association respecting
    - (i) any matter necessary or advisable to carry out the purposes of this Act, or

- (ii) the transfer of an offender between a correctional facility in the Province and a penitentiary or a correctional facility in another province of Canada;
- (f) authorize the use by a class of employees of any class of restricted or prohibited weapons;
- (g) establish correctional services to provide for
  - (i) the needs of offenders,
  - (ii) alternative measures,
  - (iii) alternative dispute resolution,
  - (iv) restorative justice,
  - (v) electronic supervision,
  - (vi) house arrest and curfew monitoring,
  - (vii) public safety, or
  - (viii) such other programs as may be established by regulation;
- (h) establish attendance centres;
- (i) provide reports and other correctional services to assist the courts in the remanding and sentencing process; and
- (j) provide for the custody and supervision of offenders.

(2) Clause (1)(e) does not authorize the Minister to enter into an agreement with a person or entity other than the Government of Canada, a province of Canada or a municipality for the custody or control of offenders in a correctional facility. 2005, c. 37, s. 3; 2014, c. 46, s. 2.

#### **Classes of persons**

4 The Minister may establish such classes of persons as may be required for the administration of this Act or any other enactment relating to the provision of correctional services in the Province. 2005, c. 37, s. 4.

#### **Conditions of employment**

5 The Minister may, in accordance with the regulations, establish conditions of employment for employees respecting

- (a) any criminal record of a prospective employee;
- (b) requirements for an employee to take an oath of office; and
- (c) such other conditions that are consistent with the provision of correctional services under this Act or the regulations. 2005, c. 37, s. 5.

#### **Code of professional conduct**

6 The Minister may, with the approval of the Governor in Council, establish a Code of Professional Conduct for employees and volunteers. 2005, c. 37, s. 6; 2014, c. 46, s. 3.

**Emergency powers**

**7** (1) In this Section, “emergency” means an actual or impending threat to

- (a) the safe and secure operation of a correctional facility;
- or
- (b) a correctional facility’s ability to provide for the necessities of life for offenders, including food, water or shelter.

(2) Where an emergency exists, the Minister may, notwithstanding any enactment, appoint the persons the Minister considers necessary to meet the requirements of the emergency. 2005, c. 37, s. 7.

**Restricted and prohibited weapons**

**8** (1) Subject to subsection (2), every person who carries a restricted or prohibited weapon into a correctional facility or a Correctional Services Division office is guilty of an offence.

(2) The Minister may, in accordance with the regulations, authorize peace officers who carry a prohibited or restricted weapon in the course of their regular duties to carry such a weapon into a correctional facility or a Correctional Services Division office. 2005, c. 37, s. 8.

**Compassionate allowance**

**9** Except where, in the opinion of the Minister, a person referred to in clauses (a) to (c) has obtained an adequate remedy for injury or damage, the Minister may pay a compassionate allowance to

- (a) an offender for permanent disability arising from an injury incurred in authorized work or participation in a program under this Act or the regulations;
- (b) a person for serious injury or damage caused by an offender who is in custody or under the supervision of the Correctional Services Division; or
- (c) an employee for serious injury or damage suffered as a consequence of the employee’s employment with the Correctional Services Division. 2005, c. 37, s. 9.

**Gifts and endowments and money received**

**10** (1) The Minister may, on behalf of the Crown in right of the Province, accept gifts or endowments for the purpose of this Act.

(2) Subject to subsection (3), any money received from any source by the Minister on behalf of or in trust for an offender, or for the general benefit of offenders, may be administered and invested by the Minister for an offender, or for the general benefit of offenders, as the case may be.

(3) The interest earned on any money invested by the Minister under subsection (2) may only be used for the general benefit of offenders. 2005, c. 37, s. 10; 2014, c. 46, s. 4.

**Employees working with individuals with mental disabilities**

**11** The Minister shall approve and implement uniform training programs and guidelines for employees who work with individuals with mental disabilities. 2010, c. 12, s. 1.

## EXECUTIVE DIRECTOR

**Executive Director**

**12** The Minister may, in accordance with the *Civil Service Act*, appoint an Executive Director for the Correctional Services Division. 2005, c. 37, s. 11.

**Duties of Executive Director**

**13** The Executive Director

(a) shall provide, administer and develop correctional services for the Province; and

(b) is responsible for the operation of all correctional facilities and Correctional Services Division offices. 2005, c. 37, s. 12.

**Delegation**

**14** The Executive Director may delegate the Executive Director's authority. 2005, c. 37, s. 13.

**Policies and procedures**

**15 (1)** The Executive Director may, in accordance with the regulations, establish such policies and procedures as the Executive Director determines are necessary respecting

(a) the provision of correctional services;

(b) the safe and secure operation, management and administration of community corrections;

(c) the monitoring of conditions contained in a court order or conditional release;

(d) the custody and control of an offender in a correctional facility;

(e) the safe and secure operation, management and administration of a correctional facility;

(f) the admission of an offender into custody;

(g) the assessment, classification and discharge of an offender under supervision or in custody;

(h) programs for an offender under supervision or in custody;

(i) the duties, responsibilities, obligations and conduct of employees; and

(j) any other matter in this Act or the regulations.

(2) The policies and procedures referred to in subsection (1) may apply generally or specifically to

- (a) community corrections;
- (b) a correctional facility;
- (c) a class of offenders; or
- (d) a class of persons. 2005, c. 37, s. 14.

#### **Establishment of training standards**

**16** The Executive Director may establish standards of training for employees. 2005, c. 37, s. 15.

#### **Duty to maintain training standard**

**17** Every employee shall maintain training at the standard established by the Executive Director or as may be prescribed by the regulations. 2005, c. 37, s. 16.

### VOLUNTEERS

#### **Volunteers**

**18** The Executive Director may appoint a person as a volunteer to provide correctional services for offenders in accordance with the regulations or the appointment. 2005, c. 37, s. 17.

#### **Screening, qualifications, training, duties and responsibilities**

**19** The Executive Director shall determine

- (a) the screening, qualifications and training of volunteers; and
- (b) the duties and responsibilities of a volunteer with respect to the provision of correctional services. 2005, c. 37, s. 18.

#### **Expenses of volunteers**

**20** Volunteers must serve without remuneration but may be reimbursed for authorized out-of-pocket expenses. 2005, c. 37, s. 19.

### INSPECTIONS, INVESTIGATIONS AND INQUIRIES

#### **Inspector**

**21** The Minister may, in accordance with the regulations, designate a person or class of persons as an inspector. 2005, c. 37, s. 20.

#### **Inspection, investigations and inquiries**

**22 (1)** An inspector may conduct inspections, investigations and inquiries for the purpose of this Act.

(2) Inspections, investigations and inquiries referred to in subsection (1) include

- (a) inspections of a correctional facility or Correctional Services Division office; and

(b) investigations of or inquiries into any matter respecting the delivery of correctional services under this Act or any other enactment relating to the provision of correctional services in the Province. 2005, c. 37, s. 21.

### **Special or independent inspection, investigation and inquiry**

**23** The Minister may designate an inspector to carry out special or independent inspections, investigations and inquiries and may vest them with the powers, privileges and immunities of a commissioner appointed under the *Public Inquiries Act*. 2005, c. 37, s. 22.

### **Obstruction of an inspector**

**24** Any employee who

(a) obstructs an inspector who is carrying out an inspection, investigation or inquiry; or

(b) withholds, destroys, conceals or refuses to furnish any information or thing required by an inspector,

may be dismissed for cause. 2005, c. 37, s. 23.

## COMPLAINT PROCEDURE

### **Offender complaints**

**25 (1)** For the purpose of this Section, the Executive Director may designate an employee or class of employees to receive and respond to a complaint referred to under subsection (2).

**(2)** Any offender who is aggrieved for any reason may make a complaint, in writing, to an employee or class of employee.

**(3)** The employee or class of employee shall respond in writing to a complaint received under subsection (2).

**(4)** Where an offender is not satisfied with the response received under subsection (3), the offender may, in accordance with the regulations, make an appeal to the Executive Director or other employee designated by the Executive Director to hear the appeal.

**(5)** The Executive Director, or designated employee, may confirm, vary or set aside the decision on appeal and may make such other decision the Executive Director or other designated employee considers appropriate.

**(6)** The decision of the Executive Director or other designated employee on appeal is final. 2005, c. 37, s. 24; 2014, c. 46, s. 5.

## HEALTH SERVICES

### **Minister of Health and Wellness**

**26** The Minister of Health and Wellness is responsible for the provision, administration and operation of health services for offenders in custody. 2005, c. 37, s. 25.

**Delegation**

**27** The Minister of Health and Wellness may delegate the delivery of health services to

(a) in the case of adult offenders in custody, the provincial health authority, as defined by the *Health Authorities Act*; or

(b) in the case of young persons in custody, the IWK Health Centre. 2005, c. 37, s. 26; 2014, c. 32, s. 108.

**Offender injury**

**28** Where an offender is injured while in custody, the responsible official shall provide the superintendent with a written report detailing the nature of the injury. 2005, c. 37, s. 27.

**Accommodation of offender**

**29** Where an offender in custody is unable to participate in programs or work or requires special accommodation due to illness, disability or injury, the responsible official shall inform the superintendent, in writing, and the superintendent shall make all reasonable efforts to accommodate the needs of the offender. 2005, c. 37, s. 28.

**Health services during close confinement**

**30** Where a health-services professional is employed in a correctional facility, the responsible official shall ensure that every offender in the facility who is in close confinement is, where a health-services professional is normally on duty, visited daily by the health-services professional. 2005, c. 37, s. 29.

**Transfer to hospital, clinic or medical appointment**

**31** Where an offender in custody becomes sick or injured and requires transfer to a community hospital or clinic, or requires a medical appointment at a location outside the correctional facility, the responsible official may request that the offender be released to or escorted by an employee to the hospital, clinic or medical appointment. 2005, c. 37, s. 30.

## PROHIBITIONS

**Prohibition respecting trespass**

**32** Subject to the regulations, no person shall trespass on a correctional facility or a Correctional Services Division office. 2005, c. 37, s. 31.

**Prohibition respecting possession of intoxicant**

**33** No person shall possess an intoxicant in a correctional facility or a Correctional Services Division office. 2005, c. 37, s. 32.

**Prohibition respecting intoxication**

**34** No person shall be under the influence of an intoxicant in a correctional facility or in a Correctional Services Division office. 2005, c. 37, s. 33.

## PART II

## CORRECTIONAL SERVICES

## COMMUNITY CORRECTIONS

**Probation officer**

**35 (1)** Probation officers must be appointed in accordance with the *Civil Service Act* and shall provide community corrections.

**(2)** A probation officer

(a) is a probation officer for the Province; and

(b) shall provide correctional services in the part of the Province that is assigned to that officer. 2005, c. 37, s. 34; 2014, c. 46, s. 6.

**Offenders under probation officer supervision**

**36** Probation officers, or such other persons as may be designated by the Executive Director, shall exercise supervision over and provide guidance to offenders

(a) where

(i) an offender's sentence includes a period of community supervision, or

(ii) a person is the subject of a court order made pursuant to an enactment that provides for supervision by the Correctional Services Division,

and one of the conditions of the court order requires the offender to report to or be under the supervision of a probation officer;

(b) where an offender is on conditional release; or

(c) where an offender is in a diversion program, fine-option program or other community-based program established under this Act, the regulations or any other enactment. 2005, c. 37, s. 35.

**Reports for court**

**37 (1)** Where requested to do so by a court, a probation officer shall, with respect to a person convicted by a court, provide the court with reports to assist the court in sentencing and reviewing sentences being served by an offender.

**(2)** Where required for the preparation of reports under subsection (1), a probation officer may request from a person any information that person may have in respect of a person who has been convicted by a court.

**(3)** Every person from whom a request for information under subsection (2) is made shall provide the information requested to the probation officer. 2005, c. 37, s. 36.

## CORRECTIONAL FACILITIES

**Superintendent**

**38** The Executive Director shall, in accordance with the *Civil Service Act*, appoint a superintendent as the person in charge of a correctional facility. 2005, c. 37, s. 37.

**Delegation of superintendent's authority**

**39 (1)** Subject to any conditions or restrictions set by the Minister or the Executive Director, a superintendent may delegate the superintendent's authority under this Act.

**(2)** In delegating a superintendent's authority under subsection (1), the superintendent may make the delegation subject to any conditions or restrictions set by the superintendent. 2005, c. 37, s. 38.

**Duties of superintendent**

**40** A superintendent shall, in order to ensure the safe and secure operation, management and administration of a correctional facility,

- (a) implement policies and procedures;
- (b) authorize and issue standard operating procedures;
- (c) authorize and issue post orders;
- (d) ensure that offenders are informed of their rights, responsibilities and privileges while in custody;
- (e) establish rules governing the conduct and activity of offenders;
- (f) ensure that employees are informed of their duties, obligations and expectations of their conduct; and
- (g) provide such other correctional services as are required in accordance with this Act and the regulations. 2005, c. 37, s. 39.

**Duty of superintendent to forward application**

**41** Where a superintendent receives an application by an offender for

- (a) an appeal under this Act;
- (b) an appeal to the court;
- (c) a writ of habeas corpus, an order in the nature of *mandamus* or an application for judicial review;
- (d) parole or conditional release;
- (e) bail review; or
- (f) a transfer under the *International Transfer of Offenders Act* (Canada),

the superintendent shall immediately forward the application to the proper authority. 2005, c. 37, s. 40.

**Separate accommodations for females**

**42 (1)** A superintendent shall ensure that every female offender in a correctional facility is housed in a separate living unit from male offenders.

**(2)** A superintendent shall ensure that every female offender in a hospital is provided with separate living accommodations from males, unless otherwise provided by the Executive Director. 2005, c. 37, s. 41.

**Supervision of female offenders**

**43** Subject to the regulations, a superintendent shall ensure that every female offender in a correctional facility is supervised by a female employee. 2005, c. 37, s. 42.

**Use of force**

**44** An employee may use as much force as is reasonably necessary, including the use of restraints, other security equipment that may be prescribed and restricted and prohibited weapons authorized by the Minister under this Act, to

- (a) maintain custody and control of an offender in custody;
- (b) maintain order and control of a correctional facility;
- (c) prevent the self-destructive behaviour of an offender in custody;
- (d) ensure the safety of other offenders, employees or persons in a correctional facility;
- (e) prevent the destruction of property;
- (f) prevent the escape of an offender from custody; and
- (g) ensure that a lawful search and seizure of contraband is carried out. 2005, c. 37, s. 43.

**Offender moved to hospital**

**45 (1)** Upon consultation with the responsible official, the Executive Director may order that an offender in custody be moved to a hospital.

**(2)** Where an offender is moved to a hospital under subsection (1), the Executive Director may designate the hospital or a part of a hospital as a correctional facility for purposes of that offender.

**(3)** Notwithstanding the *Hospitals Act*, upon the advice of the responsible official of a hospital, the Executive Director may order an offender in a hospital to be returned to a correctional facility. 2005, c. 37, s. 44.

**Determination of correctional facility**

**46** Notwithstanding any correctional facility named in a committal order, the Executive Director may

- (a) direct that an offender be held in custody in a lock-up facility, pending admission to a correctional facility;
- (b) determine the correctional facility to which an offender is to be admitted;

(c) determine the correctional facility to which an offender is to be admitted as a result of a transfer under an exchange of service agreement;

(d) authorize the transfer of an offender from one correctional facility to another, if it is necessary or advisable for the purpose of providing appropriate security, safety or correctional services. 2005, c. 37, s. 45.

#### **Prohibition on admission without committal order**

**47** No employee shall admit an offender into a correctional facility unless that offender is the subject of a committal order that states that the offender is to be admitted into a correctional facility. 2005, c. 37, s. 46.

#### **Medical attention**

**48** Where an offender is being admitted into a correctional facility and is in immediate need of medical attention, an employee shall ensure that the offender is medically examined by a health-services professional at the correctional facility or at a hospital. 2005, c. 37, s. 47.

#### **Medical certificate**

**49** Where an offender is being transferred from a penitentiary or other correctional jurisdiction, a superintendent may refuse to admit the offender into custody unless a medical practitioner certifies

- (a) the state of health of the offender; and
- (b) that the offender is fit for transfer. 2005, c. 37, s. 48.

#### **Admission to a correctional facility**

**50** Where an offender is admitted into a correctional facility, an employee who has authority to admit the offender shall, in accordance with the regulations,

- (a) search, bathe and clothe the offender; and
- (b) document the offender's personal effects and money and secure them in a safe place. 2005, c. 37, s. 49.

#### **Death of an offender**

**51** Upon the death of an offender while in custody or during a conditional release, a superintendent shall immediately report the death to

- (a) the Executive Director; and
- (b) in accordance with the *Fatality Investigations Act*, the Chief Medical Examiner. 2005, c. 37, s. 50.

#### **Release of an offender**

**52 (1)** Where an offender is entitled to be released from a correctional facility on a particular day because that offender's sentence has been served, the employee who has authority to release the offender shall release the offender during normal business hours unless the committal order or the regulations specify a different day or time for the release.

(2) Where an offender is entitled to be released from a correctional facility on a weekend or day on which public offices of the Province are closed, the employee who has authority to release the offender shall release the offender during normal business hours on the last working day before that weekend or day on which public offices of the Province are closed, unless the committal order or the regulations specify a different day or time for the release.

(3) Where an offender is entitled to be released from a correctional facility on a particular day because that offender's sentence has been served, the superintendent may, in accordance with the regulations and where the offender provides written consent, keep the offender in a correctional facility after the expiration of the sentence if

(a) the weather conditions make travel by the offender impossible or unsafe; or

(b) the offender is a young person and adequate accommodation is not available at the time of the scheduled release from custody. 2005, c. 37, s. 51.

#### **Prohibition regarding tobacco products**

**53** Subject to the regulations, or, unless permitted as part of an aboriginal spiritual service, no person shall possess or use tobacco products in or on a correctional facility. 2005, c. 37, s. 52.

#### **Prohibition regarding contraband**

**54 (1)** Every person who possesses contraband in a correctional facility is guilty of an offence.

(2) Subject to Sections 66 and 67, every person who delivers to or takes contraband from an offender or a correctional facility is guilty of an offence. 2005, c. 37, s. 53.

#### **Visitors**

**55 (1)** Subject to the regulations, where, in the opinion of a superintendent, security, safety and operational requirements reasonably permit, the superintendent shall permit an offender in custody to have visitors, including visitors appearing by way of video visitation.

(2) Notwithstanding subsection (1), subject to the regulations and such reasonable limits as are necessary for the security of the correctional facility, the safety of persons and operational requirements, the superintendent shall allow an offender in a correctional facility to have reasonable access to the offender's spiritual advisor and the offender's lawyer. 2005, c. 37, s. 54; 2014, c. 46, s. 7.

#### **Telephone, video or electronic communications**

**56** Subject to the regulations and except for telephone, video or electronic communications between an offender and the offender's lawyer or any other prescribed person, the superintendent may restrict, intercept, monitor or record the telephone, video or electronic communications of an offender in a correctional facility. 2014, c. 46, s. 8.

**Parcels and correspondence**

**57** Subject to the regulations and except for the privileged correspondence between an offender and the offender's lawyer or other prescribed person, the superintendent may read and inspect all

- (a) parcels; and
- (b) correspondence produced, recorded or stored by any means, coming into or going out of a correctional facility. 2014, c. 46, s. 9.

**Outdoor activity**

**58 (1)** A superintendent shall ensure that every offender is allowed at least 30 minutes a day for outdoor exercise.

**(2)** Notwithstanding subsection (1), the superintendent may deny an offender access to outdoor exercise if

- (a) the weather conditions make it unsafe;
- (b) the offender is actively attempting to escape;
- (c) the offender poses an immediate threat to the security of the correctional facility; or
- (d) the offender poses an immediate physical threat to the safety of other offenders or employees. 2005, c. 37, s. 57.

**Meals**

**59 (1)** A superintendent shall ensure that every offender in a correctional facility is provided regular nutritious meals.

**(2)** Where, in the opinion of the superintendent it is reasonable to do so, the superintendent shall provide special diets to offenders for religious, cultural or health reasons. 2005, c. 37, s. 58.

**Programs**

**60** Except where exempted by a health-services professional, a superintendent shall ensure that every offender works or participates in programs at a correctional facility. 2005, c. 37, s. 59.

**SEARCH****Interpretation**

**61** In Sections 62 and 63, "authorized employee" means a class of employee authorized by the superintendent. 2005, c. 37, s. 60.

**Routine search**

**62 (1)** Subject to subsection (3), an authorized employee may, in accordance with subsection (2), without individualized suspicion, conduct routine searches in the prescribed circumstances, which circumstances must be limited to what is reasonably required for safety and security purposes.

- (2) The searches may be of
- (a) any person in or on a correctional facility, or that person's property;
  - (b) a correctional facility or any property of or on a correctional facility, including vehicles in or on a correctional facility.

(3) Where the search referred to in subsection (1) is a strip search, the circumstances referred to in subsection (1) must be limited to situations in which the person has been in a place where there was likelihood of access to contraband that is capable of being hidden on the body. 2005, c. 37, s. 61.

### Search

**63** Where an authorized employee suspects, on reasonable grounds, that a person or property referred to in subsection 62(2) is carrying or contains, as the case may be, contraband or evidence relating to the commission of an offence or the contravention of a rule, the authorized employee may conduct a search. 2005, c. 37, s. 62.

### Prohibitions regarding search and strip search

- 64** Notwithstanding Sections 62 and 63,
- (a) no male employee shall search a female person; and
  - (b) no female employee shall strip search a male person. 2005, c. 37, s. 63.

### Manual examination of body cavity

**65 (1)** No employee shall conduct a manual examination of a person's body cavity.

(2) Where required pursuant to a court order, a health-services professional may perform a manual examination of a person's body cavity. 2005, c. 37, s. 64.

## SEIZURE

### Seizure

**66** An authorized employee may, during a search, seize an object or substance if the employee believes, on reasonable grounds, that the object or substance is

- (a) contraband; or
- (b) evidence relating to
  - (i) the commission of an offence, or
  - (ii) the contravention of a rule. 2005, c. 37, s. 65.

### Disposal of contraband

**67** An employee shall dispose of contraband in accordance with the regulations. 2005, c. 37, s. 66.

## DETENTION

**Detention**

**68** Where contraband or evidence relating to the commission of an offence is found in a search under Section 62 or 63, a superintendent may authorize the detention of the person in order to obtain the services of the police. 2005, c. 37, s. 67.

**Rights of detained person**

- 69** Persons detained under Section 68 have the right to be
- (a) informed promptly of
    - (i) the reasons for the detention, and
    - (ii) their right to retain and instruct counsel; and
  - (b) given a reasonable opportunity to retain and instruct counsel.
- 2005, c. 37, s. 68.

## HEARING

**Hearing on rule breach**

**70** Where an offender breaches or is alleged to have breached a rule, a superintendent may, in accordance with the regulations, hold a hearing. 2005, c. 37, s. 69.

**Penalty for rule breach**

**71 (1)** A superintendent may, in accordance with the regulations, impose a penalty on an offender for breach of a rule made pursuant to this Act or the regulations.

**(2)** The superintendent may suspend a penalty imposed under subsection (1). 2005, c. 37, s. 70.

**Appeal**

**72** An offender may, in accordance with the regulations, appeal to the Executive Director, a decision made under Section 71. 2005, c. 37, s. 71.

**Decision on appeal**

**73** The Executive Director, may, in accordance with the regulations, confirm, vary or set aside the decision on appeal and may make such other decision the Executive Director considers appropriate. 2005, c. 37, s. 72.

**Decision on appeal final**

**74** The decision of the Executive Director on appeal is final. 2005, c. 37, s. 73.

## CLOSE CONFINEMENT

**Placing offender in close confinement**

**75** A superintendent may, in accordance with the regulations, place an offender in close confinement in a correctional facility, if

- (a) in the opinion of the superintendent, the offender is in need of protection;
- (b) in the opinion of the superintendent, the offender needs to be segregated to protect the security of the correctional facility or the safety of other offenders;
- (c) the offender is alleged to or has breached a rule of a serious nature; or
- (d) the offender requests. 2005, c. 37, s. 74.

**Restriction of privileges and review of close confinement**

**76** Where an offender has been placed in close confinement, the superintendent

- (a) may restrict an offender's privileges; and
- (b) shall, in accordance with the regulations, conduct a review of the close confinement. 2005, c. 37, s. 75.

## REMISSION

**Remission**

**77** Every offender who is serving a sentence for a provincial or municipal offence shall be credited with

- (a) 15 days remission of the sentence being served, for every month during which the offender is in custody; and
- (b) a number of days, based on 15 days remission of the sentence being served, for each month that the offender is in custody, calculated on a pro rata basis in respect of each incomplete month during which the offender is in custody. 2005, c. 37, s. 76.

## CONDITIONAL RELEASE

**Interpretation**

**78** In Sections 80 and 81, "designated employee" means an employee designated under Section 79. 2005, c. 37, s. 77.

**Designated employee**

**79** The Minister may designate an employee to authorize conditional releases. 2005, c. 37, s. 78.

**Application for conditional release**

**80** Adult offenders serving sentences of less than two years and young persons serving custody sentences may, in accordance with the regulations, apply to a designated employee for a conditional release from custody for

- (a) medical reasons;
- (b) humanitarian reasons; or
- (c) reintegration or rehabilitative reasons, including education and employment. 2005, c. 37, s. 79.

**Conditional release**

- 81** A designated employee may, in accordance with the regulations,
- (a) authorize conditional releases under such terms and conditions as the employee determines are appropriate for the type of offender and the nature of the conditional release;
  - (b) deny an application for a conditional release;
  - (c) review a suspension of a conditional release under Section 85 and reinstate it on the same or different conditions; or
  - (d) revoke a conditional release. 2005, c. 37, s. 80.

**Appeal**

**82** Where an offender is not satisfied with a decision of a designated employee under Section 81, the offender may, in accordance with the regulations, appeal to the Executive Director, or other employee designated by the Executive Director to hear conditional release appeals. 2005, c. 37, s. 81.

**Decision on appeal**

**83** The Executive Director or designated employee may confirm, vary or set aside the decision on appeal and may make such other decision the Executive Director or designated employee considers appropriate. 2005, c. 37, s. 82.

**Decision on appeal final**

**84** The decision of the Executive Director or designated employee is final. 2005, c. 37, s. 83.

**Suspension of conditional release**

**85** Where an offender fails to comply with the terms and conditions of a conditional release or where the circumstances pursuant to which the conditional release was granted change, an employee may suspend the conditional release and require the offender to return to a correctional facility and be dealt with in accordance with the regulations. 2005, c. 37, s. 84.

**Apprehension of offender**

**86** Where an offender whose absence from a correctional facility is authorized under Section 81, fails to return to the correctional facility in accordance with the conditions of the conditional release certificate, or where instructed by an employee to do so, a peace officer may, with or without warrant, apprehend the offender and return the offender to a correctional facility. 2005, c. 37, s. 85.

**Contribution to costs**

**87** The superintendent may, in accordance with the regulations, charge an offender who is released on a conditional release on a daily or periodic basis and who, by reason of employment, training or a rehabilitative program, is entitled to wages, an amount of money as a contribution towards the cost of custody. 2005, c. 37, s. 86.

## PAROLE

**Jurisdiction of National Parole Board**

**88** The National Parole Board, as authorized under the *Corrections and Conditional Release Act* (Canada), is authorized to exercise in the Province, the jurisdiction of the Board under subsection 108(1) of that Act, with respect to any offender sentenced under a provincial enactment where the offender's sentence is to be served concurrently with or consecutively to a sentence imposed under an Act of the Parliament of Canada. 2005, c. 37, s. 87.

## TRANSPORTATION OF OFFENDERS

**Transportation of offenders**

**89 (1)** In this Section, "sheriff" includes a full-time, part-time or casual person employed as a sheriff by the Department of Justice.

**(2)** A sheriff, an employee or other class of person designated by the Minister, shall transport offenders

- (a) between correctional facilities; or
- (b) to or from a correctional facility and
  - (i) a lock-up,
  - (ii) court,
  - (iii) a penitentiary,
  - (iv) a hospital or medical appointment, or
  - (v) a prescribed location.

**(3)** Every offender who is being transported under subsection (2) is subject to the rules and regulations applicable to an offender in custody. 2005, c. 37, s. 88; 2014, c. 46, s. 10.

## GENERAL

**Information on offenders**

**90** Any employee may obtain and retain information on any offender in custody or under supervision as may be necessary for the purpose of

- (a) identifying an offender;
- (b) administering a sentence; or
- (c) administering this Act or any other enactment relating to the provision of correctional services. 2005, c. 37, s. 89; 2014, c. 46, s. 11.

**Screening for intoxicants**

**91** Where there are reasonable grounds for the Executive Director to believe that an offender, an employee or a volunteer is

- (a) using intoxicants or is under the influence of intoxicants in a correctional facility or in a Correctional Services Division office; or

(b) in the case of an offender that is the subject of a court order that requires the offender to abstain from the use of any or all intoxicants, using intoxicants,

the Executive Director may subject the offender, the employee or the volunteer, as the case may be, to screening for intoxicants. 2005, c. 37, s. 90; 2014, c. 46, s. 12.

#### **Provision of information to victims**

**92** Notwithstanding the *Freedom of Information and Protection of Privacy Act*, except where it would adversely impact upon the safety and security of the offender or a correctional facility, and upon receipt of a written request from a victim, a victim's parent, guardian, spouse, child or other person acting on behalf of the victim, the Executive Director shall provide the person making the request with information

(a) respecting the correctional facility in which an offender is incarcerated;

(b) respecting the transfer of an offender between correctional facilities or between a correctional facility and a penitentiary, but not including routine temporary transfers;

(c) respecting the date and condition of any unescorted conditional release of the offender;

(d) respecting an application for parole by an offender;

(e) respecting the offender's earliest release date from custody and the conditions associated with supervision by the Correctional Services Division after the offender's release from custody;

(f) respecting the offender's plans and intended destination upon release from custody; and

(g) that may be prescribed. 2005, c. 37, s. 91; 2014, c. 46, s. 13.

#### **Immunity**

**93** No action may be brought against the Minister, an employee, a probation officer or a volunteer for

(a) any act done in good faith in the execution or intended execution of that person's duty;

(b) any alleged neglect or default in the execution in good faith of that person's duty; or

(c) any act of an offender while in that person's custody or under that person's supervision. 2005, c. 37, s. 92.

#### **Conflict**

**94** Where there is a conflict between this Act or the regulations and the *Civil Service Collective Bargaining Act*, the *Civil Service Collective Bargaining Act* applies. 2005, c. 37, s. 93; 2011, c. 56, s. 2.

## PART III

## GENERAL

**Regulations**

**95 (1)** The Minister may, with the approval of the Governor in Council, make regulations

- (a) respecting conditions of employment;
- (b) prescribing an order to be included within the definition of “committal orders”;
- (c) prescribing standards for the training of employees;
- (d) prescribing an oath of office;
- (e) establishing a Code of Professional Conduct for employees and volunteers;
- (f) respecting the duties, assignments, privileges and benefits of employees not covered by a collective agreement;
- (g) respecting policies and procedures, standard operating procedures and post orders necessary for the operation of the Correctional Services Division;
- (h) respecting the use of force by employees, including the use of restraint and other security equipment;
- (i) respecting the use of restricted and prohibited weapons;
- (j) prescribing standards and criteria for obtaining and retaining fingerprints, photographs and other processes and measurements that are used to identify and maintain administrative records of offenders;
- (k) respecting inspections, investigations and inquiries;
- (l) prescribing the use of surveillance equipment;
- (m) prescribing forms;
- (n) respecting confidentiality and the disclosure of information;
- (o) respecting the maintenance and destruction of records;
- (p) providing for the establishment and administration of trusts or financial accounts for money held on behalf of offenders in general or specifically;
- (q) prescribing the manner of payment of a compassionate allowance;
- (r) prescribing the amount and manner of payments to be made to offenders;
- (s) prescribing the manner of payment of fines or restitution by offenders;

- (t) providing for the collection from an offender, or from the parent or guardian of an offender who is a young person, of the costs incurred by an offender for correctional services;
- (u) prescribing payments to be paid by offenders on conditional release;
- (v) providing for the establishment, operation and administration of correctional industries;
- (w) providing for the testing or screening of an offender, an employee or a volunteer for the use of intoxicants;
- (x) respecting the custody and supervision of female offenders;
- (y) respecting the development, establishment and delivery of correctional programs for offenders;
- (z) providing for the assessment, classification and supervision of offenders;
- (aa) respecting conditional release programs;
- (ab) respecting the process of an appeal of a decision on a conditional release;
- (ac) respecting a review or appeal process of a decision on a complaint;
- (ad) respecting the administration and operation of Correctional Services Division offices;
- (ae) prescribing the content, format and manner of submission of pre-sentence and investigative reports to court;
- (af) respecting standards for the supervision of offenders by community corrections;
- (ag) respecting the designation, establishment, classification, operation, management, supervision and administration of correctional facilities;
- (ah) prescribing the classification of offenders that a correctional facility may be used for;
- (ai) respecting access to a correctional facility;
- (aj) respecting the operation of vehicles on a correctional facility;
- (ak) respecting the transportation of an offender between correctional facilities or to or from a correctional facility and a lock-up, court or penitentiary;
- (al) prescribing locations to or from which an offender must be transported by a sheriff, an employee or another class of person designated by the Minister;
- (am) respecting the placement of offenders in or within a correctional facility;

- (an) respecting the admission, care, custody, control, employment, education, spiritual needs and privileges of an offender in a correctional facility;
- (ao) respecting searches in a correctional facility;
- (ap) respecting the release of an offender from a correctional facility upon expiration of an offender's sentence;
- (aq) respecting the seizure and destruction of contraband;
- (ar) prescribing the documentation of, retention of, distribution of and disposal of an offender's property while the offender is in a correctional facility;
- (as) limiting the liability of the Crown in right of the Province with respect to the loss or damage of an offender's property while the offender is in custody;
- (at) respecting the use of tobacco in a correctional facility;
- (au) respecting the people with whom an offender in a correctional facility may visit;
- (av) authorizing the superintendent to impose terms and conditions on the visits an offender in a correctional facility may have with a visitor;
- (aw) respecting the terms and conditions of a visit with an offender in a correctional facility;
- (ax) respecting the superintendent's power to restrict, intercept, monitor and record the telephone, video or electronic communications of an offender in a correctional facility;
- (ay) prescribing exceptions to the superintendent's power to restrict, intercept, monitor and record the telephone, video or electronic communications of an offender in a correctional facility;
- (az) respecting the superintendent's power to inspect the correspondence of an offender in a correctional facility;
- (ba) prescribing exceptions to the superintendent's power to inspect the correspondence of an offender in a correctional facility;
- (bb) respecting rules for offenders in a correctional facility and penalties for breach of those rules;
- (bc) prescribing the procedure for hearings and appeals of a breach of a rule by an offender;
- (bd) providing for allowances, necessities and the transportation of offenders upon admission to, release or discharge from a correctional facility;
- (be) respecting the remission of custodial sentences served by offenders for provincial offences;
- (bf) respecting the custody, control, care and treatment of physically disabled offenders;
- (bg) respecting electronic supervision;
- (bh) respecting attendance centres;

- (bi) respecting house arrest and curfew monitoring;
- (bj) exempting a correctional facility or community corrections from any part of this Act or the regulations;
- (bk) designating a health-services professional for purpose of this Act;
- (bl) defining any word or expression used but not defined in this Act; and
- (bm) respecting any matter the Minister determines necessary or advisable to carry out effectively the intent and purpose of this Act.

(2) The regulations made under subsection (1) may apply generally or specifically to community corrections, a correctional facility, a class of offenders or a class of persons.

(3) The exercise by the Minister of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 2005, c. 37, s. 94; 2014, c. 46, s. 14.

### Regulations

**96** (1) The Minister, together with the Minister of Health and Wellness, may, with the approval of the Governor in Council, make regulations

- (a) prescribing the duties and responsibilities of health-services professionals with respect to offenders;
- (b) providing for the sharing of health information with respect to offenders;
- (c) respecting health services provided to offenders;
- (d) respecting the custody, control, care and treatment of mentally ill offenders.

(2) The exercise by the Minister of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 2005, c. 37, s. 95.

CHAPTER C-64

**An Act Respecting Cosmetology**

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

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**Short title**

- 1 This Act may be cited as the *Cosmetology Act*. 2012, c. 39, s. 1.

**Interpretation**

- 2 In this Act,
- “Association” means the Cosmetology Association of Nova Scotia;
- “Board” means the Board of Directors of the Association;
- “bylaws” means a resolution of the Board passed by two thirds of the voting members present at a meeting of the Association at which such resolution is presented;
- “cosmetologist” means a person who is licensed pursuant to this Act to practise cosmetology, and includes a person who holds a specific licence or a temporary licence;
- “cosmetology” means
- (a) the provision of hair care, by the act of cutting, colouring, lightening, tinting, straightening, curling, drying, shaving or by any other act prescribed by the regulations, using mechanical, chemical or other means;
  - (b) the affixing of eyelashes;
  - (c) the application of non-permanent makeup;
  - (d) the provision of nail care, by the act of manicuring, pedicuring, artificial nail enhancement or by any other act prescribed by the regulations;
  - (e) the removal of hair by the act of waxing, shaving, sugaring, tweezing or using cosmetic preparations, creams, oils or simi-

lar preparations or compounds or by any other act prescribed by the regulations; or

(f) the provision of skin care by any act prescribed by the regulations;

“director” means an elected member of the Board;

“Executive Director” means the Executive Director of the Association;

“former Act” means Chapter 5 of the Acts of 1995-96, the *Cosmetology Act*;

“licence” means a licence to practise cosmetology issued in accordance with this Act and the bylaws, and includes a specific or a temporary licence;

“master cosmetologist” means a person who meets the requirements for becoming a master cosmetologist as set out in the bylaws;

“master cosmetologist instructor” means a person who meets the requirements for becoming a master cosmetologist instructor as set out in the bylaws;

“member” means a person who is registered in the Register as holding a valid licence or permit;

“Minister” means the Minister of Labour, Skills and Immigration;

“passing score” means such score as is from time to time prescribed by the bylaws as being required to pass the Board cosmetology examinations;

“permit” means a permit issued in accordance with this Act and the bylaws permitting cosmetology services to be practised in a certain fixed place or on a mobile basis;

“Register” means the register of members of the Association;

“salon” means a place where cosmetology is practised on a permanent or ongoing basis, and includes a room in a school where practical cosmetology instruction and training is given or a room in a private residence;

“school” means

(a) the College as defined in the *Community Colleges Act*;

or

(b) a private career college as defined in the *Private Career Colleges Act* that is operated by a person who holds a valid certificate of registration issued pursuant to that Act,

where students receive occupational training in the practice of cosmetology;

“specific licence” means a licence issued pursuant to this Act and limited to one or more practice areas;

“temporary licence” means a temporary licence issued pursuant to this Act. 2012, c. 39, s. 2.

**Practice of cosmetology**

**3 (1)** For the purpose of this Act, a person practises cosmetology if that person engages in cosmetology for fee, gain or expectation of reward or remuneration.

**(2)** No person may practise cosmetology in any capacity or purport to be entitled to practise cosmetology in any capacity unless that person is licensed to do so pursuant to this Act.

**(3)** A person who holds a permit or a licence is required to be a member of the Association. 2012, c. 39, s. 3.

**Duty of person to whom Act applies**

**4** A person to whom this Act applies shall comply with all applicable provisions of this Act, the regulations and the bylaws, including any standards or policies established, adopted or incorporated by reference. 2012, c. 39, s. 4.

**Act does not apply**

- 5 (1)** This Act does not apply to
- (a) a person registered as a chiropractor pursuant to the *Chiropractic Act*;
  - (b) a person registered to practise dentistry or dental surgery pursuant to the *Dental Act*;
  - (c) a person registered as a dental technician pursuant to the *Dental Technicians Act*;
  - (d) a person licensed in the practice of denturism pursuant to the *Denturists Act*;
  - (e) a person registered as a dispensing optician pursuant to the *Dispensing Opticians Act*;
  - (f) a homemaker providing services pursuant to the *Homemakers Services Act*;
  - (g) a person who is a personal care worker pursuant to the *Homes for Special Care Act*;
  - (h) a person who is a massage therapist;
  - (i) a person registered to practise medicine pursuant to the *Medical Act*;
  - (j) a person registered to practise nursing pursuant to the *Nursing Act*;
  - (k) a person registered as an occupational therapist pursuant to the *Occupational Therapists Act*;
  - (l) a person registered as a pharmacist pursuant to the *Pharmacy Act*;
  - (m) a person registered as a physiotherapist pursuant to the *Physiotherapy Act*;
  - (n) a person who is a reflexology practitioner;

- (o) a barber practising barbering pursuant to the *Barbers Association Act*; or
- (p) any other person exempted by the regulations.

(2) Notwithstanding subsection 3(2), nothing in this Act prohibits a person from engaging in the activities of a cosmetologist if the activity is necessarily incidental to that person's occupation or profession. 2012, c. 39, s. 5; 2019, c. 8, s. 180.

### **Cosmetology Association of Nova Scotia**

6 The Cosmetology Association of Nova Scotia created by the former Act is continued as a body corporate. 2012, c. 39, s. 6.

### **Objects**

- 7 The objects of the Association are to
- (a) ensure public safety and minimize the risk to the public and those engaged in the practice of cosmetology;
  - (b) establish, maintain and develop standards of sanitation, hygiene and inspection for salons, schools and other premises where cosmetology is practised;
  - (c) establish, maintain and develop standards for qualification and entry into the practice of cosmetology;
  - (d) establish, maintain and develop standards for curriculum and occupational training requirements for the cosmetology industry;
  - (e) regulate the practice of cosmetology and govern its members in accordance with this Act, the regulations and the bylaws;
  - (f) promote the interests of the cosmetology industry to government and the general public; and
  - (g) administer this Act and perform such other duties and exercise such other powers as are imposed or conferred on the Association by or under any Act. 2012, c. 39, s. 7.

### **Powers**

8 In addition to any other power conferred by this or any other Act, the Association may do such things as it considers appropriate to advance the objects of the Association and, without limiting the generality of the foregoing, may

- (a) purchase, take in, lease, exchange, hire, construct and otherwise acquire and hold, sell, mortgage, hypothecate, lease out or otherwise deal with any real or personal property;
- (b) draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, warrants and other negotiable and transferable instruments;
- (c) engage such agents, employees, consultants, contractors and professional or other services as it considers necessary and expedient;
- (d) expend the money of the Association in the advancement of its objects in such manner as it considers expedient;

- (e) establish and maintain such offices and agencies it considers expedient;
- (f) invest and deal with any money and funds of the Association that are not immediately required in such manner as it considers expedient;
- (g) improve, manage, develop, exchange, dispose of, turn to account or otherwise deal with the real or personal property of the Association;
- (h) borrow money for the use of the Association on its credit, limit or increase the amount to be borrowed, issue bonds, debentures, debenture stock and other securities on the credit of the Association and pledge or sell such securities for such sums or at such prices as it considers expedient;
- (i) enter into and carry out agreements beneficial to the operation of the Association on such terms and conditions as it considers advisable; and
- (j) do such things as are incidental or necessary to the exercise of the powers referred to in clauses (a) to (i). 2012, c. 39, s. 8.

#### **Board of Directors**

- 9** (1) There is a Board of Directors of the Association consisting of nine directors elected by the Association members at the annual meeting.
- (2) Every member in good standing is eligible to be nominated as and vote for a director, in accordance with the bylaws.
- (3) Directors must be elected for a term of office in accordance with the bylaws.
- (4) The Board shall elect from amongst its directors a Chair, in accordance with the bylaws. 2012, c. 39, s. 9.

#### **Remuneration and expenses**

- 10** The directors shall be
- (a) paid such remuneration; and
  - (b) reimbursed for such reasonable expenses necessarily incurred in the performance of their duties,
- as the Board determines in accordance with the bylaws. 2012, c. 39, s. 10.

#### **Powers of Board**

- 11** The Board may exercise all the powers and shall perform all the duties of the Association with respect to any matters that the Association may in the bylaws delegate to it. 2012, c. 39, s. 11.

#### **Committees**

- 12** (1) The Board may appoint such committees as it considers necessary to assist in carrying out its duties pursuant to this Act.

- (2) The Board may appoint
  - (a) a Discipline Committee;
  - (b) a Review Committee;
  - (c) standing Committees; and
  - (d) ad hoc committees.
- (3) The committees shall perform such functions as are set out in this Act and in the bylaws.
- (4) The committees shall follow the procedures set out in the bylaws.
- (5) Committee members shall be
  - (a) paid such remuneration; and
  - (b) reimbursed for such reasonable expenses necessarily incurred in the performance of their duties,as the Board determines in accordance with the bylaws. 2012, c. 39, s. 12.

**Executive Director**

- 13** (1) The Board shall appoint an Executive Director and determine the term of office and the duties of the Executive Director.
- (2) The Executive Director has, subject to the control and direction of the Board, charge of the conduct of the business of the Association.
- (3) The Executive Director may delegate any function assigned to the Executive Director by this Act and the bylaws.
- (4) The Board may designate a person to act in the place of the Executive Director due to the absence or the incapacity of the Executive Director.
- (5) The Executive Director is a non-voting member of the Board. 2012, c. 39, s. 13.

**Power to retain assistance**

- 14** The Board may authorize the hiring or engaging of any staff, consultants or contractors to conduct the business of the Association and may set the terms of employment of such persons. 2012, c. 39, s. 14.

**Annual meeting**

- 15** (1) There shall be an annual general meeting of the Association at such time and place as set out in the bylaws.
- (2) The bylaws must prescribe the form and content of the notice of annual meeting.
- (3) Special meetings of the Association may be held at such time and place and upon such notice as prescribed in the bylaws.

(4) The auditor must be recommended by the Board but is subject to the approval of the Association at the annual meeting.

(5) An annual report as prescribed in the bylaws, including the audited financial statements, must be distributed at or before the annual meeting for review by the members. 2012, c. 39, s. 15.

#### **Board activity report**

16 (1) At the request of the Minister, the Board shall prepare and submit to the Minister a report of the activities and operation of the Board during the preceding fiscal year.

(2) The report must include the audited financial statements and any other information the Minister requests. 2012, c. 39, s. 16.

#### **Bylaws**

17 (1) Subject to the approval of the Minister, the Board may make bylaws, not inconsistent with this Act,

(a) respecting the holding of an annual general meeting and special meetings of the Association, including the notice for such meetings, the time, place and content of such meetings, the quorum, the procedures to be followed and the manner of voting;

(b) respecting remuneration and expenses payable to persons sitting on the Board and any committees established for the purpose of attending to the business of the Association;

(c) establishing the eligibility criteria for election to the Board;

(d) establishing the timing and the manner of election to the Board;

(e) respecting the term of office of directors and members of Board committees, the manner in which vacancies may be filled and the manner for removing directors and committee members;

(f) respecting the election of the Board Chair;

(g) prescribing the role of the Board Chair, the Board and its committees;

(h) respecting the powers delegated to the Board by the Association;

(i) respecting the holding of Board meetings, including required meetings, the notice of such meetings, the quorum, the procedure to be followed and the manner of voting;

(j) respecting the establishment of, and quorum for, committees as appointed by the Board and providing for the holding and conduct of meetings of such committees;

(k) respecting the functions of committees;

(l) providing for the audit of the Association;

- (m) providing for the establishment of the fiscal year of the Association;
- (n) respecting the content and form of the annual report;
- (o) prescribing the criteria and qualifications required by members to obtain a licence and become members of the Association;
- (p) prescribing the form of licences;
- (q) prescribing the form of the Register and the information to be maintained on the Register;
- (r) prescribing membership categories;
- (s) regulating the practice of cosmetology;
- (t) prescribing the hours of school training required to apply for a licence;
- (u) prescribing the criteria required and the process for obtaining a school permit;
- (v) prescribing the form and content of examinations;
- (w) prescribing the actions inspectors may take and the sanctions inspectors may impose;
- (x) establishing complaint and disciplinary processes;
- (y) prescribing the type of information, including sanctions, to be disclosed to the public and to other licensing bodies in respect of a disciplinary proceeding;
- (z) prescribing application forms and processes;
- (aa) prescribing requirements for licences and permits and the renewal and reissuance thereof;
- (ab) prescribing penalties for late licence and permit renewal applications;
- (ac) respecting member retraining and continuing occupational training requirements;
- (ad) respecting school curriculum and programming;
- (ae) prescribing requirements for a master cosmetologist instructor licence and for a specific master cosmetologist instructor licence;
- (af) prescribing the form and content of examinations;
- (ag) prescribing the passing score for examinations;
- (ah) establishing processes to appeal an examination score that falls below the passing score;
- (ai) respecting the qualifications, duties, remuneration and expenses for examiners;
- (aj) establishing the form of inspector reports, including recommended actions and sanctions;

- (ak) respecting the qualifications, duties, remuneration and expenses of inspectors;
- (al) establishing standards of practice;
- (am) establishing standards for sanitation and hygiene for premises and equipment of salons, schools and other premises where cosmetology is practised;
- (an) establishing the form of undertaking required by the Act;
- (ao) prescribing the procedures for filing, processing and disposing of a complaint, including notice of date, time and place of hearing or submission filing dates for paper reviews;
- (ap) prescribing the procedures for filing, processing and disposing of an appeal, including notice of date, time and place of hearing or submission filing dates for paper reviews;
- (aq) respecting evidence of satisfactory previous school training;
- (ar) establishing practice areas for specific licences;
- (as) establishing examination appeal procedures;
- (at) prescribing the method of notifying parties of a decision;
- (au) establishing and approving a code of ethics and professional conduct;
- (av) respecting the delegation of the Executive Director's functions;
- (aw) respecting proof that a licence held from another province of Canada is sufficient to obtain a Provincial licence in the same capacity;
- (ax) governing such other matters as the Board considers necessary or advisable for the effective discharge of its function or the exercise of its powers;
- (ay) respecting all other things necessary or advisable for the administration of the affairs of the Association.

**(2)** The Board may make bylaws not inconsistent with this Act respecting the fees payable by applicants and members of the Association.

**(3)** All bylaws of the Board must be available during regular business hours for inspection by any person, free of charge. 2012, c. 39, s. 17.

#### **Incorporation by reference in bylaws**

**18** For the purpose of Section 17, the Association may establish, adopt or incorporate by reference into the bylaws any standards or policies to be adhered to in the practice of cosmetology if

- (a) the bylaws clearly identify the standard or policy being established, adopted or incorporated by reference; and

- (b) a copy of the standard or policy
  - (i) is available on the Association's website, or
  - (ii) can be obtained or consulted in paper copy by written request to the Executive Director. 2012, c. 39, s. 18.

**Regulations**

- 19 (1)** The Governor in Council may make regulations
- (a) prescribing any act to be used for the provision of hair care;
  - (b) prescribing any act to be used for the removal of hair;
  - (c) prescribing any act to be used for the provision of skin care;
  - (d) prescribing any act to be used for the provision of nail care;
  - (e) exempting persons or classes of persons from the application of this Act;
  - (f) exempting an act from the application of this Act;
  - (g) prescribing a service to be included in the definition of cosmetology;
  - (h) respecting the content of Board reports of activities and operations for the Minister;
  - (i) defining any word or expression used but not defined in this Act;
  - (j) further defining any word or expression defined in this Act;
  - (k) respecting any matter or thing the Governor in Council considers necessary or advisable to effectively carry out the intent and purpose of this Act.

**(2)** The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 2012, c. 39, s. 19.

## REGISTRATION, LICENSING AND PERMITS

**Register**

**20 (1)** The Association shall keep a Register in which must be entered the name, address and type of licence or permit issued to each person pursuant to this Act.

**(2)** The Register must include such other information as may be required by the bylaws.

**(3)** The Board shall cause to be kept a record available to the public showing

- (a) the name and registration number of every member;

(b) any conditions or restrictions on the person's licence if the Executive Director determines it is in the public interest to have such conditions or restrictions available to the public; and

(c) any registration conditions or restrictions imposed on a member that are not otherwise subject to a publication ban. 2012, c. 39, s. 20.

### **Membership categories**

**21 (1)** The membership categories are:

- (a) a cosmetologist;
- (b) a student of cosmetology enrolled in a school;
- (c) a salon permit holder;
- (d) a school operator; and
- (e) any other category as set out in the bylaws.

**(2)** A member's membership category must be inscribed in the Register. 2012, c. 39, s. 21.

### **Member**

**22** The Board shall register every person as a member of the Association who has applied for and met all of the criteria for registration as set out in the bylaws. 2012, c. 39, s. 22.

### **Issuing licence**

**23 (1)** The Executive Director shall issue a licence in a form prescribed by the bylaws to a person who meets the criteria as set out in this Act and the bylaws authorizing persons to practise cosmetology in the Province.

**(2)** The Executive Director may impose conditions or restrictions on a licence with the consent of the member if such conditions or restrictions are necessary in the interest of the public.

**(3)** Where conditions or restrictions are imposed by the Executive Director pursuant to subsection (2), the Executive Director shall issue the licence with conditions or restrictions. 2012, c. 39, s. 23.

### **Licence application**

**24 (1)** Every person who applies to the Executive Director for a licence to practise cosmetology

- (a) shall complete and submit an application form as prescribed by the bylaws;
- (b) shall pay the fee prescribed by the bylaws;
- (c) shall provide proof that the person has completed the required occupational training or work experience for the type of licence being applied for in accordance with subsection (2); and

(d) must obtain a passing score on the Association's examinations held pursuant to this Act.

(2) Before taking an examination referred to in clause (1)(d), a person shall provide evidence satisfactory to the Board, as prescribed by the bylaws, that the person

(a) has been trained as a student in cosmetology in a school, for no less than the prescribed number of hours of theory and practical instruction set out in the bylaws, under the supervision of a master cosmetologist instructor; or

(b) has sufficient work experience in the capacity for which the licence is sought to write the examination without further occupational training. 2012, c. 39, s. 24.

### Practice capacities

**25 (1)** A person may be licensed to practise cosmetology in one or more of the following capacities:

(a) a cosmetologist limited to hairdressing or esthetics;

(b) a master cosmetologist limited to hairdressing or esthetics;

(c) a master cosmetologist instructor limited to hairdressing or esthetics;

(d) a specific licence, including a specific master instructor licence, limited to one or more practice areas as set out in the bylaws.

(2) A person may apply for a temporary licence in one or more of the capacities listed in subsection (1) in accordance with the requirements set out at Section 28. 2012, c. 39, s. 25.

### Student

**26 (1)** Every student enrolled in a course of study in cosmetology in the Province must hold a student permit issued by the Executive Director.

(2) Students shall apply for a student permit within 30 days of the beginning of their course.

(3) A student enrolled in practical training or school instruction shall display the student permit in a place clearly visible to the public at the location where cosmetology is practised.

(4) The instructor or the salon operator shall ensure the student complies with the display requirements referred to in subsection (3). 2012, c. 39, s. 26.

### Instructor

**27** No person shall engage in the instruction of cosmetology in a school unless the person

(a) holds a master cosmetologist instruction licence; or

(b) holds a specific master instructor licence,  
issued by the Executive Director in accordance with the bylaws. 2012, c. 39, s. 27.

#### **Temporary licence**

**28 (1)** Upon paying the fee prescribed by the bylaws, a person may apply for a temporary licence to practise cosmetology if that person

(a) has completed the necessary occupational training and examination requirements for a licence as a student and is awaiting the examination results;

(b) is licensed to practise cosmetology in another jurisdiction and has commenced the application process for a licence to practise in the Province; or

(c) is licensed to practise cosmetology in another jurisdiction and seeks to practise cosmetology in the Province solely on a short-term basis.

**(2)** The Executive Director may issue a temporary licence for a specified period in accordance with the criteria prescribed by the bylaws.

**(3)** The Executive Director may extend the specified period of a temporary licence.

**(4)** Notwithstanding the licence renewal provisions set out in subsections 35(2) to (4), a temporary licence may only be renewed in accordance with the bylaws.

**(5)** The Executive Director may impose conditions or restrictions on a temporary licence if such conditions or restrictions are necessary in the interest of the public.

**(6)** Where the Executive Director imposes conditions or restrictions pursuant to subsection (5), such conditions or restrictions are not licensing sanctions.

**(7)** The Executive Director shall enter in the Register the names of all persons holding a temporary licence and the names of all persons holding a temporary licence with conditions or restrictions.

**(8)** A person who holds a temporary licence shall display the licence in a place clearly visible to the public at the location where cosmetology is practised. 2012, c. 39, s. 28.

#### **Licensed in another province**

**29 (1)** A person licensed to practise cosmetology in another province of Canada may apply to the Executive Director for a licence in the same capacity in the Province.

**(2)** Subject to verification by the Executive Director, an applicant referred to in subsection (1) must provide proof as required by the bylaws that the

licence held from another jurisdiction is sufficient to obtain a Provincial licence in the same capacity.

(3) Upon meeting the requirements in subsection (2), the person applying for a licence pursuant to subsection (1) is exempt from the requirements of clauses 24(1)(c) and (d) and subsection 24(2). 2012, c. 39, s. 29.

#### **Permit to operate school**

**30 (1)** No person shall operate a school unless that person holds a permit to do so issued pursuant to this Act.

- (2) Every person who applies for a permit to operate a school shall
- (a) complete and submit an application form as prescribed by the bylaws;
  - (b) pay the fee prescribed by the bylaws; and
  - (c) satisfy any additional requirements set out in the bylaws.

(3) The Executive Director shall issue a permit to operate a school to a person who meets the criteria as set out in subsection (2) and in the bylaws. 2012, c. 39, s. 30.

#### **Permit to operate salon**

**31 (1)** No person shall operate a salon unless that person holds a permit to do so issued pursuant to this Act.

- (2) Every person who applies for a permit to operate a salon must
- (a) complete and submit an application form as prescribed by the bylaws;
  - (b) pay the fee prescribed by the bylaws;
  - (c) provide an undertaking in the form prescribed by the bylaws, requiring the person to ensure that all cosmetologists employed or otherwise engaged by the person at the salon will fulfill their professional responsibilities pursuant to this Act; and
  - (d) satisfy any additional requirements set out in the bylaws.

(3) The Executive Director shall issue a permit to operate a salon to a person who meets the criteria set out in subsection (2) and in the bylaws. 2012, c. 39, s. 31.

#### **Mobile services**

**32 (1)** No person shall transport equipment to different locations for the purpose of providing mobile cosmetology services unless the person holds a mobile services permit.

- (2) Every person who applies for a mobile services permit must

- (a) complete and submit an application form as prescribed by the bylaws;
- (b) pay the fee prescribed by the bylaws;
- (c) satisfy any additional requirements set out in the bylaws.

(3) The Executive Director shall issue a mobile services permit to a person who meets the criteria set out in subsection (2) and in the bylaws. 2012, c. 39, s. 32.

#### **Operating salon**

33 No person shall operate a salon where cosmetology is practised unless that person

- (a) holds a licence to practise as a cosmetologist; or
- (b) employs at that salon a person who holds a licence to practise as a cosmetologist. 2012, c. 39, s. 33.

#### **Cosmetology practice in private residence**

34 No person shall practise cosmetology in a private residence unless the practice

- (a) is carried on in a room or rooms that are used exclusively for the practice of cosmetology; or
- (b) is authorized pursuant to a mobile services permit. 2012, c. 39, s. 34.

#### **Display of licence or permit**

35 (1) Unless otherwise authorized in writing by the Executive Director, every licence and permit holder shall display the licence and permit in a place clearly visible to the public at the location where cosmetology is practised.

(2) Unless otherwise provided in this Act, any licence or permit issued by the Executive Director remains in force until the end of the calendar year in which it was issued and may be renewed by following the process set out in the bylaws.

(3) Where a person does not renew a licence or permit within two months of its expiry date, the person's name must be removed from the Register and the licence or permit may not be renewed until such time as the person has paid to the Association the annual renewal fees and any penalties for each year or part thereof from the date of expiry of the licence or permit to the date of renewal, and continues to meet the licence or permit requirements.

(4) Where the licence of any person has lapsed for a period of three years or more, the Board may, before issuing to that person a licence or renewal, require that person to complete such training, examination or period of work service under the supervision of another cosmetologist as may be prescribed by the bylaws. 2012, c. 39, s. 35.

**Prohibition respecting designations**

**36** No person other than a cosmetologist licensed under this Act may use the designation “cosmetologist”, “licensed cosmetologist” or “registered cosmetologist”. 2012, c. 39, s. 36.

## TRAINING AND EXAMINATIONS

**Authorized school**

**37** Only a school as defined in this Act is authorized to offer a course of study in cosmetology. 2012, c. 39, s. 37.

**Examiners**

**38 (1)** Subject to the approval of the Board, the Executive Director may appoint one or more examiners to assist in the conduct of examinations of persons who wish to practise cosmetology.

**(2)** The qualifications and duties of examiners must be prescribed by the bylaws.

**(3)** Each examiner shall be paid such remuneration and reimbursed for such reasonable and necessary expenses incurred by the examiner in the performance of the examiner’s duties as the Board determines. 2012, c. 39, s. 38.

**Examinations**

**39 (1)** The Association shall conduct examinations in cosmetology at least three times a year, throughout the Province, at such times and places as the Board determines.

**(2)** Every person required to take an examination pursuant to this Act must receive no less than 30 days notice of the time and place of the examination.

**(3)** The form and conduct of the examinations must be set out in the bylaws.

**(4)** Where a person fails to attain a passing score on an examination, that person may, within 30 days of receipt of the examination results, appeal in writing to the Board by following the procedures prescribed by the bylaws.

**(5)** On reviewing an appeal made pursuant to subsection (4), the Board may

(a) uphold or vary the result; or

(b) direct the person to take a new examination to be graded by a different examiner or a different group of examiners.

**(6)** A person who fails to attain a passing score on an examination may apply to the Board to be re-examined and may be re-examined no more than three times.

**(7)** A person who fails three times to attain a passing score on an examination may not apply to be examined again until such time as the person satis-

fies the Board that the person has enrolled in an exam preparation course offered or approved by the Board. 2012, c. 39, s. 39.

## INSPECTIONS

### Inspectors

**40 (1)** The Board may authorize the hiring or engaging of qualified persons as inspectors to perform the duties and functions conferred by this Act, including the inspection of any premises and equipment in the Province where cosmetology is practised.

**(2)** The qualifications required to be an inspector must be set out in the bylaws. 2012, c. 39, s. 40.

### Inspections

**41 (1)** Inspectors may

(a) inspect schools, salons or other premises where cosmetology is practised;

(b) enter and inspect during business hours premises in which cosmetology is practised or advertised as being practised;

(c) require the production of any relevant documents or records for inspection and copying;

(d) inspect equipment used to practise cosmetology;

(e) inquire into matters that relate to compliance with this Act.

**(2)** It is an offence to refuse access to an inspector or to interfere with an inspector in the exercise of a power granted pursuant to this Act.

**(3)** An Inspector shall prepare and submit to the Board a report for each inspection containing any necessary recommendations made to the Executive Director for appropriate action or sanction as set out in the bylaws.

**(4)** Notwithstanding clause (1)(b), an inspector may not enter a private dwelling place or any part of a place that is designed to be used and is being used as a permanent or temporary private dwelling place except

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

(b) pursuant to an order to enter and inspect obtained pursuant to Section 42. 2012, c. 39, s. 41.

### Order to enter and inspect

**42 (1)** Notwithstanding anything contained in this Act, where a judge of the Supreme Court of Nova Scotia is satisfied on evidence under oath by an inspector that

(a) there are reasonable grounds to believe that it is appropriate for the administration of this Act for the inspector to do anything set out in Section 41; and

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

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

(ii) a person has denied the inspector access to premises or there are reasonable grounds for believing that a person may deny the inspector access to premises,

(iii) a person has prevented the inspector from doing anything set out in Section 41 or denied the inspector access to any thing, as a result of which the inspector is unable to do anything set out in Section 41,

(iv) there are reasonable grounds to believe that a person may prevent an inspector from doing anything set out in Section 41, or may deny the inspector access to any thing as a result of which the inspector may be unable to do anything set out in Section 41,

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

(vi) there are reasonable grounds to believe that an attempt by the inspector to do anything set out in Section 41 without the order might defeat the purpose of that Section or cause an adverse effect,

the judge may issue an order authorizing the inspector to do anything set out in Section 41 that is specified in the order for the period of time set out in the order.

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

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

(4) An order under this Section may be issued or renewed on application without notice. 2012, c. 39, s. 42.

## DISCIPLINE AND APPEALS

### **Purpose of disciplinary process**

**43** The purpose of the disciplinary process is to ensure the protection of the public and to maintain and preserve the integrity of the practice of cosmetology. 2012, c. 39, s. 43.

### **Interpretation**

**44** In Sections 45 to 60,

“complaint” means a notice in writing made pursuant to subsection 47(1) indicating the possible violation of this Act, the regulations or the bylaws, by a member or other person and may include violations such as

- (a) practising cosmetology without a valid licence;
- (b) practising cosmetology without a valid permit; or
- (c) engaging in professional misconduct;

“disciplinary process” means the process as described in this Act and in the bylaws respecting disciplinary proceedings;

“member” means, unless the context otherwise requires, a person whose name is or was entered on the Register;

“professional misconduct” includes such conduct or acts relevant to the practice of cosmetology that, having regard to all the circumstances, would reasonably be regarded as disgraceful, dishonourable or unprofessional and, without limiting the generality of the foregoing, includes

- (a) failing to maintain the standards for the practice of cosmetology due to incompetence or incapacity;
- (b) failing to fulfill all professional responsibilities under this Act and the bylaws; and
- (c) failing to comply with the *Safe Body Art Act* and the regulations made pursuant to that Act;

“respondent” means the member who is the subject of a complaint. 2012, c. 39, s. 44.

#### **Disciplinary process**

**45 (1)** A member may be subject to the disciplinary process in accordance with this Act and the bylaws for violating the Act, the regulations or the bylaws, including

- (a) practising cosmetology without a valid licence or valid permit; and
- (b) engaging in professional misconduct.

**(2)** Where a member ceases to be licensed or ceases to hold a valid permit for any reason, the member remains subject to the jurisdiction of the Board for the purpose of the disciplinary process if the subject-matter of the complaint arises out of the person’s conduct while licensed or while holding a valid permit. 2012, c. 39, s. 45.

#### **Initiation of complaint**

**46 (1)** A complaint may be initiated by

- (a) a member;
- (b) any body corporate or association;
- (c) an inspector hired or engaged pursuant to Section 40;
- (d) a committee of the Association; or
- (e) any other person.

(2) Where the Board and the complainant so agree, a complaint may be withdrawn. 2012, c. 39, s. 46.

### Complaint in writing

47 (1) A complaint must be made in writing within two years of the incident giving rise to the complaint.

(2) Subject to subsection (3), a complaint must be signed.

(3) A complaint may be submitted electronically if it is signed electronically by the complainant or the complainant's identity is verified by the Executive Director. 2012, c. 39, s. 47.

### Complaints process

48 (1) Upon receipt of the complaint, the Executive Director may

- (a) make any inquiries necessary to address the complaint;
- (b) conduct a preliminary investigation to gather facts from the complainant and the respondent;
- (c) take all necessary steps to address the complaint.

(2) Within 30 days of receipt of the complaint, the Executive Director shall

- (a) dismiss the complaint in accordance with subsection (5);
- (b) informally resolve the complaint and take no further action if the complaint is satisfactorily resolved in accordance with the objects of the Association; or
- (c) refer the complaint to the Discipline Committee.

(3) The Executive Director shall provide a decision in writing to the respondent and the complainant.

(4) The written decision referred to in subsection (3) must be sent by registered mail, personal service or such other method as provided for by the bylaws.

(5) The Executive Director may dismiss a complaint if

- (a) it is outside the jurisdiction of the Association;
- (b) it is frivolous or vexatious;
- (c) it is absent supporting facts; or
- (d) the incident giving rise to the complaint arose more than two years before the date of the complaint. 2012, c. 39, s. 48.

### Discipline Committee

49 (1) Subject to subsection (2), the Board shall appoint, on an ad hoc basis, a Discipline Committee composed of such number of members and other persons as is determined by the Board.

- (2) No director may serve as a member of the Discipline Committee.
- (3) The Discipline Committee shall consider complaints referred to it by the Executive Director pursuant to clause 48(2)(c) in accordance with the bylaws.
- (4) The Discipline Committee shall investigate any complaint referred to it by the Executive Director.
- (5) The Discipline Committee may request that an inspector investigate
- (a) the practice of an individual cosmetologist;
  - (b) the cosmetology activities taking place in a salon, in a school or in another premises;
  - (c) the hygiene and degree of sanitation of a salon, a school or the equipment used to offer mobile cosmetology services.
- 2012, c. 39, s. 49.

#### **Proceeding on complaint**

- 50** (1) Following an investigation or the receipt of an inspector's report, the Discipline Committee shall advise the respondent of the findings in writing and provide an opportunity for the respondent to respond to the findings in accordance with this Section.
- (2) The Discipline Committee may, in accordance with the procedures set out in the bylaws, conduct a review by
- (a) holding an oral hearing; or
  - (b) considering written submissions only.
- (3) The respondent and the complainant may jointly request the type of review in accordance with subsection (2) to be conducted by the Discipline Committee.
- (4) A notice containing such information as required by the bylaws must be forwarded to the respondent and the complainant at least 30 days before the review.
- (5) Each party before the Discipline Committee has the right to
- (a) be represented by legal counsel who is a member in good standing of the Nova Scotia Barristers' Society;
  - (b) present evidence, make submissions and, on an oral hearing, cross-examine witnesses; and
  - (c) receive written reasons for a decision within a reasonable time.
- (6) Evidence is not admissible before the Discipline Committee unless the opposing party has been given notice in accordance with the bylaws before the hearing and

(a) in the case of written or documentary evidence, an opportunity to examine the evidence;

(b) in the case of evidence of an expert, a copy of the expert's written report or, where there is no written report, a written summary of the evidence; and

(c) in the case of evidence of any other witness, the identity of the witness.

(7) Notwithstanding subsection (6), the Discipline Committee may, in its discretion, allow the introduction of evidence that would be otherwise inadmissible under subsection (6) and may make the directions it considers necessary to ensure that a party is not prejudiced.

(8) The Discipline Committee shall provide a decision in writing to the complainant and the respondent.

(9) The written decision referred to in subsection (8) must be sent by registered mail, personal service or such other method as provided for by the bylaws. 2012, c. 39, s. 50.

#### **Disposition of matters**

**51 (1)** The Discipline Committee may, by order, take any action that is not inconsistent with this Act, the regulations or the bylaws, including one or more of the following:

(a) issue a written reprimand;

(b) require that a cosmetologist undergo additional occupational training or examination;

(c) suspend or revoke a licence;

(d) subject to subsection (2), suspend or revoke a permit;

(e) impose sanitation or hygienic requirements in accordance with the bylaws;

(f) require the disciplined member to pay all or part of the cost of the discipline process, including the inspection costs and legal fees incurred by or on behalf of the Association.

(2) Notwithstanding anything else in this Act, a school permit may not be suspended or revoked without the prior approval of a person designated by the Minister.

(3) The Discipline Committee shall dismiss the complaint if no disciplinary measures are required. 2012, c. 39, s. 51.

#### **Review Committee**

**52 (1)** Subject to subsection (2), the Board shall appoint, on an ad hoc basis, a Review Committee composed of such number of members or other persons as is determined by the Board.

(2) No director or member of the Discipline Committee in the matter before the Review Committee may serve as a member of the Review Committee.

(3) A complainant may, in accordance with the bylaws, file an appeal of the Executive Director's decision

- (a) made pursuant to clause 48(2)(a) or (b); or
- (b) regarding registration or licensing,

to the Review Committee no later than 30 days after service of the Executive Director's decision.

(4) A complainant or respondent may appeal a decision of the Discipline Committee to the Review Committee in accordance with the bylaws no later than 30 days after service of the Discipline Committee decision.

(5) The Review Committee may, in accordance with the procedures set out in the bylaws, conduct a review by

- (a) holding an oral hearing; or
- (b) considering written submissions only.

(6) The respondent and the complainant may jointly request the type of review in accordance with subsection (5) to be conducted by the Review Committee.

(7) A notice containing such information as required by the bylaws must be forwarded to the respondent and the complainant at least 30 days prior to the review.

(8) The parties before the Review Committee have the right to

- (a) be represented by legal counsel who is a member in good standing of the Nova Scotia Barristers' Society;
- (b) present evidence, make submissions and, on an oral hearing, cross-examine witnesses; and
- (c) receive written reasons for a decision within a reasonable time.

(9) Evidence is not admissible before the Review Committee unless the opposing party has been given notice in accordance with the bylaws before the hearing and

- (a) in the case of written or documentary evidence, an opportunity to examine the evidence;
- (b) in the case of evidence of an expert, a copy of the expert's written report or, where there is no written report, a written summary of the evidence; or
- (c) in the case of evidence of any other witness, the identity of the witness.

(10) Notwithstanding subsection (9), the Review Committee may, in its discretion, allow the introduction of evidence that would be otherwise inadmissible under subsection (9) and may make the directions it considers necessary to ensure that a party is not prejudiced.

(11) The Review Committee may, by order, confirm, vary or reverse the decision appealed from or make any decision the Executive Director or Discipline Committee was empowered to make pursuant to this Act. 2012, c. 39, s. 52.

### **Report**

**53** The Executive Director shall report all complaints, decisions and appeals to the Board. 2012, c. 39, s. 53.

### **Confidentiality**

**54** (1) All complaints received or under investigation, all information gathered in the course of the disciplinary process and all proceedings and decisions of the Executive Director, the Discipline Committee and the Review Committee that are not open to or available to the public in accordance with this Act, the regulations or the bylaws must be kept confidential by any person who possesses such information.

(2) Notwithstanding subsection (1) but subject to subsections (3) and (4), where it is consistent with the objects of the Association,

(a) a Discipline Committee or a Review Committee may direct the Executive Director to disclose to law enforcement authorities any information about possible criminal activity on the part of a member that is obtained during an investigation pursuant to this Act;

(b) a Discipline Committee or a Review Committee may authorize the Executive Director to release specific information to a specific person;

(c) a Discipline Committee or a Review Committee may direct the Executive Director to disclose information with respect to the complaint to an extra-provincial cosmetology regulatory body if it is relevant and concerns the fitness of the member for membership in the extra-provincial cosmetology regulatory body; and

(d) the Board may direct the Executive Director to disclose information with respect to a complaint for the purpose of the administration of this Act or to comply with the objects of the Association.

(3) Where information sought to be disclosed under subsection (2) includes a member's personal health information, or treatment provided by any health provider, such information must not be disclosed.

(4) A witness in any legal proceeding, whether a party thereto or not, is excused from answering any question as to any proceedings of the Discipline Committee or the Review Committee, and is excused from producing any report, statement, memorandum, recommendation, document or information prepared for purposes of the Association, including any information gathered in the course of an investigation, or produced for the Discipline Committee or the Review Committee.

(5) Subsection (4) does not apply to documents or records that have been made available to the public by the Association.

(6) Unless otherwise determined by a court of competent jurisdiction, a decision of the Discipline Committee or the Review Committee is not admissible in a civil proceeding other than an appeal or review pursuant to this Act.

(7) The Discipline Committee or the Review Committee may impose a publication ban on any or all parts of proceedings conducted by the committee, or the decision rendered by the committee, if the committee considers it appropriate. 2012, c. 39, s. 54.

### Appeals

**55** (1) A complainant or respondent may appeal on an error of law from the findings of the Review Committee to the Nova Scotia Court of Appeal.

(2) A notice of appeal must be filed with the Nova Scotia Court of Appeal and served upon the other party no later than 30 days after service of the Review Committee decision.

(3) The record on appeal from the findings of the Review Committee consists of a copy of the entire record of the proceedings, the decision of the Review Committee and the evidence before the committee certified by the chair of the Review Committee.

(4) The *Civil Procedure Rules* governing appeals to the Nova Scotia Court of Appeal that are not inconsistent with this Act apply with necessary changes to appeals to the Court of Appeal pursuant to this Section.

(5) Where a matter is appealed to the Nova Scotia Court of Appeal pursuant to this Section, the decision of the Review Committee takes effect immediately unless the Court of Appeal grants a stay of the order being appealed. 2012, c. 39, s. 55.

### Relicensing application

**56** (1) Where the licence of a person has been suspended or revoked for a period of more than 90 days, that person may apply to the Executive Director for relicensing after 90 days from the date of the suspension or revocation.

(2) Where the person referred to in subsection (1) satisfies the Executive Director that the person

- (a) is qualified to hold the licence;
- (b) has complied with any conditions of relicensing;
- (c) has paid all fees or any other amounts owing to the Association; and
- (d) has met all the Board requirements for relicensing,

the Executive Director may issue a licence to the person. 2012, c. 39, s. 56.

**Application for reissuance of permit**

**57 (1)** Where a permit has been suspended or revoked for a period of more than 90 days, the person who holds or held the permit may apply to the Executive Director to have the permit reissued after 90 days from the date of the suspension or revocation.

**(2)** Where an applicant satisfies the Executive Director that the matters that resulted in the suspension or revocation of the permit have been resolved or rectified, the Executive Director may issue a permit to the applicant. 2012, c. 39, s. 57.

**Reissuing licence or permit**

**58 (1)** Upon reissuing a licence or a permit, the Executive Director shall issue the licence or permit as it existed, including any conditions or restrictions, prior to being suspended or revoked, if the criteria for issuing the licence or permit are met.

**(2)** A fee in accordance with the bylaws is payable on the application for the reissuance of a licence or permit.

**(3)** Where action has been taken pursuant to subsections (1) and (2), the Executive Director shall

- (a) make the appropriate entries in the Register;
- (b) where registering bodies in other Canadian cosmetology jurisdictions have previously been informed of the suspension or revocation, notify such registering bodies of the lifting of such suspension or revocation; and
- (c) notify such other persons as directed by the Committee that initially imposed the suspensions or revocation. 2012, c. 39, s. 58.

**Records and publication**

**59 (1)** Subject to any publication bans in existence, where a licence or permit is revoked by the Discipline Committee or the Review Committee, the Executive Director shall

- (a) make such entries on the Register as set out in the bylaws;
- (b) cause to be published such information in an Association newsletter as is prescribed by the bylaws;
- (c) cause to be published such information as is prescribed by the bylaws on an Association website and in a newspaper circulating in the community where the member resides; and
- (d) notify other cosmetologist licensing bodies as set out in the bylaws.

**(2)** The publication costs arising from the implementation of subsection (1) must be paid by the former holder of the licence or permit. 2012, c. 39, s. 59.

### Service of documents

**60** Any documents required to be served on or provided to a respondent, to a complainant or any other individual are deemed to be served or provided if

- (a) the intended recipient or the intended recipient's counsel acknowledges receipt of the document;
- (b) a delivery receipt is provided by Canada Post;
- (c) an affidavit of service is provided; or
- (d) the Executive Director provides satisfactory evidence that all reasonable efforts to effect service have been exhausted. 2012, c. 39, s. 60.

### Offences

**61 (1)** Every person who

- (a) practises cosmetology in contravention of any condition or restriction contained in the person's licence;
- (b) knowingly furnishes false information in any application under this Act or in any statement required to be furnished under this Act, the regulations or the bylaws; or
- (c) otherwise contravenes this Act, the regulations or the bylaws,

is guilty of an offence and liable on summary conviction to a fine of not more than \$5,000.

**(2)** The *Summary Proceedings Act* applies in addition to any penalty otherwise provided for in this Act, the regulations or the bylaws.

**(3)** All fines and penalties payable under this Act or under the *Summary Proceedings Act* as a result of a prosecution by or on behalf of the Association must be paid to the Association.

**(4)** Any information to be laid pursuant to this Act or the *Summary Proceedings Act* may be laid by the Executive Director or a person authorized by the Executive Director.

**(5)** In a prosecution of an offence contrary to this Act, the regulations or the bylaws, the onus to prove that a person accused of an offence has the right to use a designation protected by this Act is on the person accused.

**(6)** Where a contravention of this Act, the regulations or the bylaws by a person continues for more than one day, the offender is guilty of a separate offence for each day that the contravention continues. 2012, c. 39, s. 61.

### Injunctions

**62 (1)** In the event of a threatened or a continuing contravention of this Act, the regulations or the bylaws, the Association may file an application to be heard by a judge of the Supreme Court of Nova Scotia for an injunction to restrain the person from continuing or committing the contravention and, where the judge considers it to be just, the judge may grant such injunction.

(2) A judge may, on motion, grant an interim injunction pending the hearing of an application for an injunction pursuant to subsection (1) if the judge is satisfied that there is reason to believe that a person is likely to commit or is continuing to commit a contravention of this Act, the regulations or the bylaws.

(3) A judge may make such orders as to costs as the judge considers appropriate in any proceedings pursuant to this Section. 2012, c. 39, s. 62.

**No action lies**

**63** (1) No action for damages or other relief lies against the Board, the Executive Director, any committee member, an inspector or any officer or employee of the Association,

(a) for any act or failure to act or any proceeding initiated or taken in good faith under this Act, or in carrying out the duties or obligations under this Act;

(b) for any decision, order or resolution made or enforced in good faith under this Act.

(2) No action lies against any person for the disclosure of any information or any document or anything therein pursuant to this Act unless such disclosure is made with malice.

(3) No member of the Board, the Executive Director, any committee member, an inspector or any officer or employee of the Association is personally liable for any of the debts or liabilities of the Association unless such person expressly agrees to be liable. 2012, c. 39, s. 63.

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CHAPTER C-65

**An Act Respecting Costs and Fees**

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

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**Short title**

**1** This Act may be cited as the *Costs and Fees Act*. R.S., c. 104, s. 1.

PART I

**Fees, allowances and party and party costs**

**2 (1)** The Governor in Council may determine, by regulation, fees and allowances for the departments, officials or persons set out below in respect of services provided by those departments, officials or persons, except party and party costs, or in respect of other related services or any combination of services:

- (a) departments;
- (b) Supreme Court of Nova Scotia and Nova Scotia Court of Appeal;
- (c) Supreme Court of Nova Scotia (in matrimonial matters);
- (d) courts of probate;
- (e) fees to be taken under the *Summary Proceedings Act*;
- (f) fees to be taken by an administrative justice of the peace;
- (g) constables' fees before justices of the peace under the *Collection Act* and the *Summary Proceedings Act*;
- (h) fees for a registrar of deeds;
- (i) fees of a jailer;
- (j) fees on distress for rent;
- (k) fees under the *Collection Act*.

(2) The Governor in Council may make regulations respecting the waiver or reduction of any fee or allowance otherwise payable pursuant to subsection (1) or the regulations, including, without restricting the generality of the foregoing, regulations prescribing the circumstances under which the fee or allowance may be waived and designating a person or a class of persons who may waive or reduce the fee or allowance.

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

(4) Party and party costs in respect of the services mentioned in the regulations, or in respect of other related services or any combination of services, are determined by the Costs and Fees Committee.

- (5) The Costs and Fees Committee is composed of
- (a) the Chief Justice of Nova Scotia or that judge's nominee;
  - (b) the Chief Justice of the Supreme Court of Nova Scotia or that judge's nominee; and
  - (c) three barristers appointed by the Council of the Nova Scotia Barristers' Society.

(6) The party and party costs determined pursuant to subsection (4) are subject to the approval of the Attorney General and come into force and are effective upon publication in the Royal Gazette or at such other time subsequent to publication as the Costs and Fees Committee may determine. R.S., c. 104, s. 2; 2001, c. 42, s. 1; 2004, c. 3, s. 6.

**Penalty for improper billing**

3 Every person taking any other or greater fee or allowance shall, for each offence, forfeit to the person aggrieved \$40, which sum, with such excessive fee or allowance, may be recovered by the aggrieved person in an action of debt. R.S., c. 104, s. 3.

**Commencement of action**

4 Any action for any such forfeiture must be brought in the county in which the offence was committed, and within six months next after the date of such offence. R.S., c. 104, s. 4.

**Fees payable to General Revenue Fund**

5 The fees taken at any of the departments of the Government must be paid into the General Revenue Fund and must be accounted for in the annual account of such department. R.S., c. 104, s. 5.

**Fees paid over to Attorney General**

6 Every prothonotary, clerk of the Crown, sheriff, registrar of deeds and registrar of probate shall on the first day of each month pay over to the Attorney General for the use of the Province all fees that are paid to that person under the regulations and under any other Act of the Legislature in virtue of that person's office during the preceding month except

- (a) fees taken or paid to sheriffs for travel;
- (b) fees paid by the Attorney General or the Minister of Finance and Treasury Board or by the treasurer of any municipality or by a municipal council; and
- (c) fees taken by or paid to registrars of deeds for any documents registered under the provisions of the *Farm Credit Canada Act* (Canada). R.S., c. 104, s. 6; 1999 (2nd Sess.), c. 1, s. 1; 2004, c. 3, s. 7.

**Required returns**

7 Every prothonotary, clerk of the Crown, registrar of deeds and registrar of probate shall make such return or returns at such time or times and verified in such manner as the Attorney General from time to time requires for the purpose of giving full effect to the provisions of this Act or any of the provisions. R.S., c. 104, s. 7.

**Penalty for non-compliance**

8 Where any prothonotary, clerk of the Crown, sheriff, registrar of deeds or registrar of probate makes default in complying with any of the requirements of this Act, that person is liable to a penalty not exceeding \$1,000. R.S., c. 104, s. 8.

**Fees recoverable as debt**

9 The amount of any fees required to be paid over to the Attorney General as aforesaid is recoverable with full costs as a debt due to the Crown in right of the Province from the person required as aforesaid to pay over such fees. R.S., c. 104, s. 9.

**Determination of amount payable**

**10** In determining the amount payable

- (a) to prothonotaries;
- (b) to sheriffs;
- (c) under the *Registry of Deeds Act* to registrars of deeds; or
- (d) under the *Probate Act* to registrars of probate,

the amount of fees required as aforesaid to be paid over to the Attorney General may not be regarded as fees either collected or uncollected. R.S., c. 104, s. 10.

**Fees not charged by registrar**

**11** No fees may be taken by any registrar of deeds for searches made by the officers of any regional municipality, town or other municipality for municipal purposes and no fees may be taken by any registrar of probate for searches made by, or for documents filed by, the officers of any regional municipality, town or other municipality for municipal purposes. R.S., c. 104, s. 11.

**Replacement of Attorney General**

**12** The Governor in Council may from time to time designate some other member of the Executive Council in the place and stead of the Attorney General mentioned in Sections 6, 7, 9 and 10 and upon such designation being made, all returns and payments required to be made under the provisions of said Sections must be to such member of the Executive Council. R.S., c. 104, s. 12.

## PART II

## FEES PAYABLE FOR THE ADMINISTRATION OF JUSTICE

## AMOUNT OF FEES

**Fees allowed constables**

**13 (1)** Every constable receiving or entitled to receive any salary or other remuneration in that capacity from any source whatsoever, including the Crown in right of the Province, or otherwise, is, for executing or, when due diligence has been used, for attempting to execute process or warrants of commitment in case of a person charged with an indictable offence, allowed such reasonable disbursements as the prosecuting officer having cognizance of the case considers proper.

**(2)** Every other constable is, for executing or, when due diligence has been used, for attempting to execute process or warrants of commitment in case of a person charged with an indictable offence, allowed the fees in that behalf, prescribed in the regulations or, in lieu of those fees, the constable is allowed such reasonable disbursements and such sum for each day necessarily spent by the constable in executing or so attempting to execute such process or warrant of commitment as the prosecuting officer having cognizance of the case considers proper. R.S., c. 104, s. 15; 2004, c. 3, s. 8.

**Fees allowed witnesses**

**14 (1)** Every person who attends before a justice of the peace, a judge of the Provincial Court or the Supreme Court of Nova Scotia as a witness for the prosecution in respect of an indictable offence is allowed the fees prescribed in the regulations for the person's travel and actual attendance.

**(2)** The presiding judge may, on the application of any such person, direct that there be paid to such person, in addition to the fees prescribed in the regulations,

(a) a further sum not exceeding \$1.50 for each day's actual attendance; or

(b) a sum not exceeding the amount by which the expenses necessarily and reasonably incurred by such person for such attendance exceeds the fees and allowances payable to such person under this Part.

**(3)** All sums directed by the presiding judge to be paid pursuant to the provisions of subsection (2) must be paid out of the General Revenue Fund. R.S., c. 104, s. 16; 2004, c. 3, s. 9.

**Additional fees for medical testimony**

**15** The presiding judge may, in the judge's discretion, direct that any duly qualified medical practitioner who has given medical testimony for the prosecution is entitled to a fee or allowance in addition to the ordinary witness fees prescribed in the regulations and the amount of such additional fee or allowance must be fixed by the judge. R.S., c. 104, s. 17; 2004, c. 3, s. 10.

**Poor witness allowance**

**16** Where a witness is a poor person who is obliged to attend a sitting of any court on recognizance or subpoena, the court or judge may direct that such person be paid, in addition to such fees, such allowance as the court or judge, after examining such poor person on oath, thinks reasonable for the person's time, trouble and expense as a witness. R.S., c. 104, s. 18.

**Fees allowed crier**

**17** Every crier is allowed in criminal cases the fees prescribed in the regulations. R.S., c. 104, s. 19; 2004, c. 3, s. 11.

**Fees allowed interpreters**

**18 (1)** Interpreters necessary on the hearing of any criminal matter are allowed such fees as are certified by the prosecuting officer, not exceeding \$5 per day.

**(2)** Such fees must be paid by the Crown in right of the Province on the production of a certificate from the prosecuting officer certifying that an interpreter was necessary in the matter and that the amount certified for such fees is reasonable and proper in the circumstances. R.S., c. 104, s. 20; 1994-95, c. 7, s. 19.

**Changes to fees and allowances**

**19 (1)** Notwithstanding anything contained in this Act, the Governor in Council may

- (a) prescribe fees and allowances for the purpose of this Act and change the fees and allowances;
- (b) prescribe the forms to be used under this Act;
- (c) authorize a person to determine the fees and allowances or the circumstances in which additional fees and allowances must be paid;
- (d) determine the responsibility for payment of new or additional fees and allowances.

**(2)** The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. R.S., c. 104, s. 21; 2004, c. 3, s. 12.

VERIFICATION OF ACCOUNT

**Certification of witness' account**

**20 (1)** A witness or prosecutor is entitled to the payment of the witness' or prosecutor's fees and allowances when they are certified to be correct

- (a) by the prosecuting officer, if any, and by the judge of the Provincial Court or justice of the peace in the case of which the prosecuting office has cognizance, whether there is such prosecuting officer or not; or
- (b) by the prosecuting officer and the clerk of the Crown, or clerk of the court, in a case before the Supreme Court.

**(2)** Persons giving medical testimony are entitled to payment of any additional allowance fixed by a judge as hereinbefore provided, upon presentation of a certificate in the following form:

I hereby certify that . . . . . is entitled to an additional allowance as witness fees for medical testimony given on behalf of the Crown in the case of the R. vs . . . . . at the . . . . . sittings of the Court at . . . . .

I have fixed such additional allowance at . . . . . dollars.

Dated . . . . .

Judge presiding at the said trial.

R.S., c. 104, s. 24.

**Necessity of witness certified**

**21** The certificate must state that there was reasonable ground for instituting the proceedings, that the witness was a material and necessary witness for the prosecution, and that the witness attended expressly to give evidence in the same. R.S., c. 104, s. 25; 2004, c. 3, s. 13.

**Affidavit for Section 21 certificate**

**22** Before signing such certificate an affidavit may be required from any such prosecutor or witness, stating the facts required to be stated in such certificate, or the prosecutor or witness may be examined on oath in respect to such facts. R.S., c. 104, s. 26.

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CHAPTER C-66

**An Act to Establish the Council  
of the Maritime Premiers**

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WHEREAS the Provinces of Nova Scotia, New Brunswick and Prince Edward Island are unanimous in their desire to promote unity of purpose among their respective governments;

AND WHEREAS they wish to ensure maximum coordination of the activities of the governments of the three provinces and their agencies;

AND WHEREAS the said provinces wish to establish the framework for joint action and undertakings;

AND WHEREAS the Maritime Union Study recommended the establishment of a Council of Maritime Premiers as one of the agencies for co-operative action among the said provinces;

AND WHEREAS by an agreement dated May 25, 1971, the premiers of the said provinces agreed to general principles for the operation of a Council of Maritime Premiers for the purpose of pursuing the objectives herein recited;

AND WHEREAS the said premiers have met several times for such purpose;

AND WHEREAS it is desirable to enact legislation in each of the said provinces respecting a Council of Maritime Premiers:

**Short title**

**1** This Act may be cited as the *Council of Maritime Premiers Act*. R.S., c. 105, s. 1.

**Interpretation**

2 In this Act,

“Agreement” means an agreement among the Provinces of Nova Scotia, New Brunswick and Prince Edward Island referred to in Section 3;

“Council” means the Council of Maritime Premiers established pursuant to this Act;

“parties” means the Crown in right of each of the Provinces of Nova Scotia, New Brunswick and Prince Edward Island represented by the respective lieutenant governors in council. R.S., c. 105, s. 2.

**Agreement**

3 The Governor in Council may

(a) enter into an Agreement with the lieutenant governors in council of the Provinces of New Brunswick and Prince Edward Island for the establishment of a body to be known as the Council of Maritime Premiers composed of the premiers of the Provinces of Nova Scotia, New Brunswick and Prince Edward Island; and

(b) agree, from time to time, with the Provinces of New Brunswick and Prince Edward Island to amend the Agreement. R.S., c. 105, s. 3.

**Terms of Agreement**

4 The Agreement may

(a) authorize the Council to do or cause to be done, on behalf of the parties, any or all such things as the parties thereto are otherwise empowered to do and consider necessary or ancillary to the attainment of the objectives set forth in the preamble to this Act;

(b) provide for the financing of the operations of the Council and for cost-sharing arrangements;

(c) contain such other provisions as may be necessary or desirable to provide for the administration of the Council and for its operations. R.S., c. 105, s. 4.

**Fiscal year**

5 The fiscal year of the Council commences on April 1st in each year and ends on March 31st in the year next following. R.S., c. 105, s. 5.

**Annual budget**

6 The Council shall prepare an annual budget, which must be submitted to the Governor in Council. R.S., c. 105, s. 6.

**Appropriation**

7 If the budget is approved by the lieutenant governors in council in the Provinces of Nova Scotia, New Brunswick and Prince Edward Island, there must be introduced in the House of Assembly a resolution or resolutions for an appropriation or appropriations to enable the Province to meet its share of the budget. R.S., c. 105, s. 7.

**Annual report**

**8** Each year the Council shall prepare and publish a report on its activities in the preceding year. R.S., c. 105, s. 8.

**Tabling of agreement**

**9 (1)** Any agreement or any amendment thereto made under this Act when the House of Assembly is in session must be tabled during that session.

**(2)** Any agreement or any amendment thereto made under this Act when the House of Assembly is not in session must be tabled at the next following session. R.S., c. 105, s. 9.

**Deemed agreement**

**10** The Agreement dated May 25, 1971, is deemed to be an agreement under this Act. R.S., c. 105, s. 10.

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CHAPTER C-67

**An Act Respecting the Practice  
of Counselling Therapists**

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### Short title

- 1** This Act may be cited as the *Counselling Therapists Act*, 2008, c. 37, s. 1.

### Interpretation

- 2** In this Act,

“appraisal or assessment” means selecting, administering, scoring and interpreting instruments designed to assess an individual’s attitudes, abilities, achievements, interests and personal characteristics and the use of methods and techniques, including interviewing and direct observation, for understanding and evaluating human behaviour in relation to coping with, adapting to or changing life situations;

“Association” means the Nova Scotia Association of Counselling Therapists;

“Board” means the Board of the College;

“bylaw” means a bylaw of the College;

“civil proceeding” means any proceeding of a civil nature other than an arbitration proceeding or a proceeding before an adjudicative tribunal board or commission of inquiry;

“College” means the Nova Scotia College of Counselling Therapists;

“competence” means the ability to integrate and apply the knowledge, skills and judgement required to practise safely and ethically in a des-

ignated role and practice setting, and includes both entry level and continuing competencies;

“complaint” means a notice in writing indicating possible professional misconduct, conduct unbecoming the profession, incompetence or incapacity of a member;

“Complaints Committee” means the Complaints Committee established by this Act;

“consulting” means the application of scientific or well-established principles and procedures in counselling and human development to provide assistance in understanding and solving current problems that a consultee may have in relation to a third party, whether an individual, a group or an organization;

“continuing-education credits” means credits approved by the Board for programs, conferences and other activities of a continuing-education nature;

“counselee” means an individual, group, community or population who is the recipient of counselling-therapy services;

“counselling” means assisting counselees through the counselling relationship, using a combination of mental health and human development principles, methods and techniques to achieve mental, emotional, physical, social, moral, educational, spiritual or career development and adjustment through the counselee’s lifespan;

“counselling therapist” means a counselling therapist whose name appears on the Register and who is licensed to practise counselling therapy;

“counselling-therapy education program” means a master’s level counselling degree or an equivalent degree program as approved by the Board;

“electronic means” means the use of telephone, facsimile, television, video conferencing, cable, internet, intranet or any form of electronic or computerized communication;

“hearing” means a process before the Professional Conduct Committee following the issuance of a notice of hearing, where the parties lead evidence and make submissions to the Professional Conduct Committee, but does not include the consideration by the Professional Conduct Committee of a settlement proposal or an application for consent revocation or any hearing or any proceeding before the Complaints Committee;

“incapacity” means the status whereby a respondent, at the time of the subject-matter of a complaint, suffered from a medical, physical, mental or emotional condition, disorder or addiction that rendered the respondent unable to practise with reasonable skill or judgement or that may have endangered the health or safety of counselees;

“incompetence” means the display of a lack of knowledge, skill or judgement in the respondent’s care of a counselee or delivery of counselling-therapy services that, having regard to all the circumstances, rendered the respondent unsafe to practise at the time of such care of the counselee or delivery of counselling-therapy services or that renders the respondent unsafe to continue in the practice of counselling therapy without remedial assistance;

“individual scope of practice” means the roles, functions and accountabilities that an individual is educated and authorized to perform;

“investigator” means a person designated by the Registrar to conduct or supervise an investigation into a complaint;

“judge” means a judge of the Supreme Court of Nova Scotia;

“legal proceeding” means any civil proceeding, discovery, inquiry, proceeding before any tribunal, board or commission or arbitration, in which evidence is or may be given, and includes an action or proceeding for the imposition of punishment by fine, penalty or imprisonment for the violation of a Provincial enactment, but does not include any proceeding or hearing conducted pursuant to this Act or the regulations;

“licence” means an active-practising licence, with or without conditions or restrictions, or a temporary licence issued in accordance with this Act and the regulations;

“licensing sanction” means

(a) the imposition of conditions or restrictions on a licence by the Complaints Committee or the Professional Conduct Committee or their equivalent from another jurisdiction;

(b) a consent reprimand ordered by the Complaints Committee or its equivalent from another jurisdiction;

(c) a reprimand issued by the Professional Conduct Committee or its equivalent from another jurisdiction;

(d) a suspension of a licence by the Complaints Committee or the Professional Conduct Committee or their equivalent from another jurisdiction; or

(e) a revocation of registration by the Professional Conduct Committee or its equivalent from another jurisdiction;

“member” means a person whose name is entered in the Register and, for the purpose of Sections 13 to 30 and the regulations, includes a person who holds a temporary licence at the time of an incident giving rise to a complaint;

“party” means the College or a respondent, as the context requires;

“practice of counselling therapy” means rendering to individuals, couples, families, groups, organizations, corporations, schools or other institutions, government agencies or the general public a service that integrates diverse models of human behaviour, such as clinical, pathology, wellness, cross-cultural and other recognized models through a combination of counselling, appraisal and assessment, consulting, referral and research;

“profession” means the profession of counselling therapy;

“Professional Conduct Committee” means the Professional Conduct Committee established by this Act;

“professional conduct process” means the processes described in Sections 31 to 54 and in the “Professional Conduct” part of the regulations;

“professional corporation” means one or more counselling therapists incorporated pursuant to the laws of the Province for the purpose of engaging in the practice of counselling therapy;

“professional misconduct” includes such conduct or acts relevant to the profession that, having regard to all the circumstances, would reasonably be regarded as disgraceful, dishonourable or unprofessional and, without limiting the generality of the foregoing, may include

- (a) failing to maintain the standards for the practice of counselling therapy;
- (b) failing to uphold the code of ethics adopted by the College;
- (c) abusing a person verbally, physically, emotionally or sexually;
- (d) misappropriating personal property, drugs or other property belonging to a counsellee or a member’s employer;
- (e) wrongfully abandoning a counsellee;
- (f) neglecting to provide care to a counsellee;
- (g) failing to exercise appropriate discretion in respect of the disclosure of confidential information;
- (h) falsifying records;
- (i) inappropriately using the professional status of counselling therapist for personal gain;
- (j) promoting for personal gain any drug, device, treatment, procedure, product or service that is unnecessary, ineffective or unsafe;
- (k) publishing, or causing to be published, any advertisement that is false, fraudulent, deceptive or misleading; and
- (l) engaging or assisting in fraud, misrepresentation, deception or concealment of a material fact when applying for or securing registration or a licence or taking any examination provided for in this Act, including using fraudulently procured credentials;

“public representative” means a member of the Board or of a committee who is not a member of the College;

“referral” means evaluating and identifying needs of a counsellee to determine the advisability of referral to other specialists, informing the counsellee of such judgment and communicating as requested or considered appropriate to such referral services;

“Register” means the Register established pursuant to this Act;

“registered counselling therapist re-entry program” means a program approved by the Board that tests counselling-therapy knowledge and provides for a period of preceptored clinical counselling-therapy practice;

“Registrar” means the Registrar of the College appointed pursuant to this Act;

“Registration Appeal Committee” means the Registration Appeal Committee established by this Act;

“registration examination” means such examination or examinations as may be approved from time to time by the Board in the bylaws as a prerequisite for qualification as a counselling therapist;

“Reinstatement Committee” means the Reinstatement Committee established by this Act;

“research” means a systematic effort to collect, analyze and interpret quantitative or qualitative data that describe how social characteristics and behaviour, emotion, cognitions and interpersonal transactions among individuals and organizations interact;

“respondent” means the member who is the subject of a complaint or the subject of an appeal pursuant to Section 19;

“roster” means the record of the category of licensing established pursuant to this Act or the regulations;

“scope of practice of the profession” means the roles, functions and accountabilities that counselling therapists are educated and authorized to perform;

“settlement proposal” means a proposal for the settlement of a complaint as prescribed in the regulations;

“standards for the practice of counselling therapy” means the minimal professional practice expectations for any counselling therapist in any setting or role, approved by the Board or otherwise inherent in the profession;

“temporary licence” means a temporary licence issued pursuant to this Act;

“witness” includes every person who, in the course of a legal proceeding, is examined for discovery or is cross-examined upon an affidavit made by that person, answers any interrogatories or makes an affidavit as to documents or is called upon to answer any question or produce any document, whether under oath or not, and includes the College or any representative of the College. 2008, c. 37, s. 2.

## COLLEGE

### Association continued as College

**3 (1)** The Association, a society incorporated under the *Societies Act*, is continued as a body corporate under the name of the Nova Scotia College of Counselling Therapists and is composed of its members.

**(2)** All assets and property held by the Association are the assets and property of the College, effective October 11, 2021.

**(3)** The College has perpetual succession and a common seal, with power to acquire, hold, lease, mortgage and otherwise dispose of real and personal property, and may sue and be sued. 2008, c. 37, s. 3.

**Duties of College**

4 In order to

- (a) serve and protect the public interest;
- (b) preserve the integrity of the profession; and
- (c) maintain public confidence in the ability of the profession to regulate itself,

the College shall

- (d) govern its members in accordance with this Act and the regulations;
- (e) establish, develop and promote standards of practice among its members;
- (f) establish, develop and promote a code of ethics for its members;
- (g) approve continuing-education credits for the benefit of its members;
- (h) subject to clauses (d) to (g), and in the public interest, advance and promote the practice of counselling therapy; and
- (i) do such other lawful acts and things as are incidental to the attainment of the purposes and objects set out in this Section. 2008, c. 37, s. 4.

**Powers of College**

5 In addition to any other power conferred by this or any other Act, the College may do such things as it considers appropriate to advance the objects of the College and, without limiting the generality of the foregoing, may

- (a) purchase, take in, lease, exchange, hire, construct and otherwise acquire and hold, sell, mortgage, hypothecate, lease out or otherwise deal with any real or personal property;
- (b) draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, warrants and other negotiable and transferable instruments;
- (c) engage such agents and employees as it, from time to time, considers expedient;
- (d) expend the money of the College in the advancement of its objects in such manner as it considers expedient;
- (e) establish and maintain such offices and agencies as it considers expedient;
- (f) invest and deal with any money and funds of the College that are not immediately required in such manner as it considers expedient;
- (g) improve, manage, develop, exchange, dispose of, turn to account or otherwise deal with the real or personal property of the College;
- (h) borrow money for the use of the College on its credit, limit or increase the amount to be borrowed, issue bonds, debentures, debenture stock and other securities on the credit of the College and pledge or sell such securities for such sums or at such prices as considered expedient;

- (i) secure the repayment of money borrowed, in such manner and upon such terms and conditions as it considers fit, and, in particular, by the execution and delivery of mortgages of all or any part of the real or personal property of the College, both present and future;
- (j) do such things as are incidental or necessary to the exercise of the powers referred to in clauses (a) to (i). 2008, c. 37, s. 5.

#### **Annual meeting, annual report and auditors**

- 6 (1)** There must be an annual meeting of the College at such time and place as is determined by the Board.
- (2)** An annual report must be distributed at or before the annual meeting for review by the membership and must include a report by an auditor.
- (3)** Auditors must be recommended by the Board but are subject to the approval of the College at the annual meeting. 2008, c. 37, s. 6.

#### **Board of College**

- 7 (1)** The Board shall govern the College and manage its affairs and may take any action consistent with this Act and the regulations that it considers necessary for the promotion, protection, interest or welfare of the College, including
  - (a) the setting of fees payable by applicants and members;
  - (b) approving the processes for establishing, revising and monitoring the annual budget;
  - (c) submitting to each annual general meeting of the College an audited financial statement of the College's operations for the past fiscal year;
  - (d) appointing an auditor for the College; and
  - (e) approving proposed changes to this Act, the regulations and the bylaws.
- (2)** The Board may take any action consistent with this Act by resolution. 2008, c. 37, s. 7.

#### **Composition of Board**

- 8 (1)** The Board is composed of
  - (a) the Chair, the Vice-chair, the past Chair, the Secretary and the Treasurer, each of whom holds a licence;
  - (b) no fewer than three and no more than six members, each of whom holds a licence; and
  - (c) no fewer than two and no more than three public representatives appointed by the Governor in Council who have shown an interest in serving on the Board.
- (2)** Persons on the Board are elected or appointed to office, or succeed to office, in the manner prescribed by the bylaws.

(3) Notwithstanding subsection (2), public representatives on the Board continue to hold office until their successors are appointed or until such time as they are reappointed. 2008, c. 37, s. 8.

**Quorum**

9 A majority of the members of the Board constitutes a quorum. 2008, c. 37, s. 9.

**Registrar**

10 (1) The Board shall appoint a Registrar of the College and the Board shall determine the term of office and the duties of the Registrar.

(2) The Registrar may delegate any functions assigned to the Registrar by this Act, the regulations or the bylaws.

(3) The Registrar is a non-voting member of the Board. 2008, c. 37, s. 10.

**Bylaws**

11 The Board may make bylaws not inconsistent with this Act

(a) respecting fees payable by applicants and members as approved by the Board;

(b) respecting the holding of the annual general meeting and special meetings of the College, including the notice for such meetings, the content of such meetings, the quorum, the procedures to be followed and the manner of voting;

(c) respecting fees and expenses payable to persons sitting on the Board and any other committees established for the purpose of attending to the business of the College;

(d) establishing a Nominations Committee, including its composition and duties;

(e) establishing the timing and manner of the election or appointment to the Board;

(f) establishing the eligibility for election or appointment to the Board;

(g) respecting the terms of office of the persons sitting on the Board, the manner in which vacancies on the Board may be filled and the manner of removing Board members;

(h) prescribing the manner in which resolutions are forwarded to the Board;

(i) prescribing the roles of the Chair and Chair elect;

(j) respecting the holding of Board meetings, including required meetings, the notice for such meetings, the procedure to be followed and the manner of voting;

(k) respecting the establishment of, and quorum for, committees as may be appointed by the Board and providing for the holding and conduct of meetings of such committees;

- (l) approving examinations from time to time and other matters that are a prerequisite to qualifying an individual as a counselling therapist;
- (m) respecting the seal of the College;
- (n) approving the code of ethics and standards for the practice of counselling therapy; and
- (o) respecting all other things necessary for the administration of the affairs of the College. 2008, c. 37, s. 11.

### Regulations

**12 (1)** Subject to the approval of the Governor in Council, the Board may make regulations

- (a) regulating the registration, licensing, discipline and reinstatement of members as counselling therapists;
- (b) respecting conditions for which temporary licences may be issued, including designations authorized for use by holders of temporary licences;
- (c) creating one or more rosters of members and prescribing the rights, privileges, qualifications and obligations of the members of each roster and prescribing the conditions for the entry and maintenance of members' names in each roster;
- (d) creating categories of affiliation with the College, including honorary and student categories, and prescribing the rights, privileges, qualifications and obligations of the persons in these categories and prescribing the conditions for the entry and maintenance of such persons' names in these categories;
- (e) setting requirements for the approval of continuing-education credits;
- (f) setting requirements for professional liability insurance or other forms of malpractice coverage or liability protection;
- (g) prescribing tasks authorized to be performed under the supervision or control of a counselling therapist and the degree of supervision and control required;
- (h) respecting the information to be included on the Register;
- (i) respecting the revocation or suspension of licences issued pursuant to this Act and the reinstatement of such licences and allowing for conditions, limitations or restrictions to be attached to a reinstated licence;
- (j) allowing for an award of costs on a solicitor client or other basis;
- (k) providing that the licence of a member be suspended without notice or investigation upon contravention of any regulation that requires the member to pay a fee, to file a document or do any other act by a specified or ascertainable date and providing for the reinstatement of a licence so suspended upon payment of such fee as is determined by the Board;

(l) respecting the ability of the Registrar, the Complaints Committee and the Professional Conduct Committee to impose a fine where members have engaged in the practice of counselling therapy while not holding a current licence;

(m) respecting the reporting and publication of decisions in disciplinary matters;

(n) providing for the audits of some or all persons who hold a licence and their practice environments;

(o) prescribing legislation pursuant to Section 41, the violation of which may require a member to attend a hearing;

(p) prescribing the requirements and processes for incorporation of counselling therapists;

(q) providing for the retention and destruction of counsellor records maintained by a custodian appointed pursuant to this Act and processes and procedures to be utilized by the custodian;

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

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

(t) governing such other matters as the Board considers necessary or advisable for the effective discharge of its functions or the exercise of its powers.

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

(3) All regulations and bylaws of the Board must be available for inspection by any person, free of charge, at the head office of the College at all reasonable times during business hours. 2008, c. 37, s. 12.

## REGISTRATION AND LICENSING

### Register

**13** (1) The Board shall keep a Register in which is entered the name of all persons who are entitled pursuant to this Act to be registered in the Register.

(2) The Register must include such other information as may be required by the regulations.

(3) The Board shall cause to be kept a record available to the public showing

(a) the name and registration number of every member;

(b) any conditions or restrictions on such person's licence if the Registrar determines it is in the public interest to have such conditions or restrictions available to the public; and

(c) any licensing sanctions imposed on a member that are not otherwise subject to a publication ban. 2008, c. 37, s. 13.

**Members**

**14** (1) The categories of members are as set out in the regulations.

(2) The Board shall cause to be maintained separate rosters for each category of member as provided by the regulations. 2008, c. 37, s. 14.

**Registration Committee**

**15** (1) The Board shall appoint a Registration Committee, the membership of which consists of one public representative and two counselling therapists from the licensed roster.

(2) The Board shall appoint one of the members of the Registration Committee as the Chair of the Committee.

(3) A majority of the Registration Committee members constitutes a quorum.

(4) The Registration Committee shall perform such functions as are set out in this Act, the regulations and the bylaws.

(5) Each member of the Registration Committee has all the rights, powers and privileges of a commissioner appointed pursuant to the *Public Inquiries Act*. 2008, c. 37, s. 15.

**Licences**

**16** (1) The Registrar shall register and shall issue a licence to a person who has completed a counselling-therapy education program and who meets the criteria for registration and entry in the licensed roster as set out in the regulations.

(2) The Registrar may impose conditions or restrictions on the licence with the consent of the member if such conditions or restrictions are necessary in the interest of the public.

(3) Where conditions or restrictions are imposed by the Registrar pursuant to subsection (2), the Registrar shall issue to the applicant a licence with conditions or restrictions.

(4) Where the Registrar imposes conditions or restrictions pursuant to subsection (2), such conditions or restrictions are not licensing sanctions. 2008, c. 37, s. 16.

**Temporary licence**

**17** (1) Where a person

(a) fails to meet the requirements or conditions for a licence, with or without conditions or restrictions as prescribed by the regulations; or

(b) is registered or licensed to practise counselling therapy in another jurisdiction,

and it is otherwise consistent with the objects of the College but impractical to issue a licence, with or without conditions or restrictions, the Registrar, upon payment of

the prescribed fee, may approve or refuse an application for a temporary licence and shall notify the applicant accordingly.

(2) A temporary licence issued pursuant to subsection (1) must be issued for a specified period of time, not to exceed 12 months in total.

(3) The Registrar may impose conditions or restrictions on a temporary licence if such conditions or restrictions are necessary in the interest of the public.

(4) Where conditions or restrictions are imposed by the Registrar pursuant to subsection (3), the Registrar shall issue to the applicant a temporary licence with conditions or restrictions.

(5) Where the Registrar imposes conditions or restrictions pursuant to subsection (3), such conditions or restrictions are not licensing sanctions.

(6) The College shall maintain a roster of temporary licences and a roster of temporary licences with conditions or restrictions.

(7) The decision of the Registrar respecting the issue of a temporary licence or a temporary licence with conditions or restrictions is final. 2008, c. 37, s. 17.

#### **Registration of counselling therapist candidate**

18 The Registrar shall register a person as a counselling therapist candidate if the person meets the criteria for registration as a counselling therapist candidate pursuant to the regulations. 2008, c. 37, s. 18.

#### **Appeal**

19 Where an applicant

- (a) has been refused registration; or
- (b) has been refused a licence,

the Registrar shall give written reasons for such decision and the applicant may, by written notice, appeal that decision to the Registration Appeal Committee within 30 days of receipt of such written notice. 2008, c. 37, s. 19.

#### **Registration Appeal Committee**

20 (1) The Board shall appoint a Registration Appeal Committee, the membership of which consists of one public representative and two counselling therapists from the licensed roster.

(2) The Board shall appoint one of the members of the Registration Appeal Committee as the Chair of the Committee.

(3) A majority of the Registration Appeal Committee members constitutes a quorum.

(4) The Registration Appeal Committee shall perform such functions as are set out in this Act, the regulations and the bylaws.

(5) Each member of the Registration Appeal Committee has all the rights, powers and privileges of a commissioner appointed pursuant to the *Public Inquiries Act*, 2008, c. 37, s. 20.

### Hearings

21 (1) The Registration Appeal Committee, upon receipt of an appeal pursuant to Section 19, shall

- (a) set a date for a hearing of the appeal, which is not later than 60 days following receipt of the written notice of appeal;
- (b) serve written notice of the date, time and place for the hearing of the appeal upon the appellant and the Registrar; and
- (c) advise the appellant of the right to
  - (i) be represented by legal counsel or another representative, at the expense of the appellant,
  - (ii) disclosure of any information to be provided to the Registration Appeal Committee, and
  - (iii) a reasonable opportunity to present a response and make submissions.

(2) The parties to an appeal before the Registration Appeal Committee are the College and the appellant.

(3) Evidence is not admissible before the Registration Appeal Committee unless, at least 10 days before the appeal, the opposing party has been given

- (a) in the case of written or documentary evidence, an opportunity to examine the evidence;
- (b) in the case of evidence of an expert, a copy of the expert's written report or, where there is no written report, a written summary of the evidence; and
- (c) in the case of evidence of any other witness, the identity of the witness.

(4) Notwithstanding subsection (3), the Registration Appeal Committee may, in its discretion, allow the introduction of evidence that is otherwise inadmissible under subsection (3) and may make directions it considers necessary to ensure that a party is not prejudiced.

(5) In a proceeding before the Registration Appeal Committee, the parties have the right to

- (a) the opportunity to present evidence and make submissions, including the right to cross-examine witnesses; and
- (b) receive written reasons for a decision within a reasonable time.

(6) At a hearing before the Registration Appeal Committee, all material relied upon by the Registrar in making the decision that is the subject of the appeal must be provided to the Committee and to the appellant.

(7) In addition to the material provided to the Registration Appeal Committee pursuant to subsection (6), either party may present additional evidence to the Committee and call witnesses.

(8) The testimony of witnesses at a hearing before the Registration Appeal Committee must be taken under oath or affirmation. 2008, c. 37, s. 21.

#### **Decision**

22 (1) The Registration Appeal Committee, in accordance with the evidence it receives when hearing an appeal, may make any determination that, in its opinion, ought to have been made by the Registrar or the Registration Committee.

(2) The Registration Appeal Committee shall give its decision in writing and shall send to the applicant a copy of the written decision by registered mail or personal service.

(3) The decision of the Registration Appeal Committee is final. 2008, c. 37, s. 22.

#### **Prohibitions**

23 (1) No person shall take or use the designation “Counselling Therapist”, “Registered Counselling Therapist” or “RCT”, or any derivation or abbreviation thereof, in the Province, either alone or in combination with other words, letters or descriptions to imply that the person is entitled to use the designation unless such person

(a) holds a licence with or without restrictions;

(b) is a holder of a temporary licence with or without restrictions or conditions; or

(c) is otherwise authorized to use such designation and to engage in the practice of counselling therapy as set out in this Act or the regulations.

(2) No person shall take or use the designation “Counselling Therapist Candidate” or “Registered Counselling Therapist Candidate” or any derivation or abbreviation thereof in the Province, either alone or in combination with other words, letters or descriptions to imply that the person is entitled to use the designation unless such person meets the criteria for the issuing of a temporary licence (counselling therapist candidate) pursuant to this Act and the regulations and is authorized pursuant to the regulations to engage in the practice of counselling therapy. 2008, c. 37, s. 23.

#### **Certified statement is prima facie proof**

24 A statement certified under the hand of the Registrar respecting the membership and entry in the appropriate roster of a person’s name is admissible in evidence as prima facie proof of that person’s entry in such roster. 2008, c. 37, s. 24.

**Record of conditions or restrictions**

**25** Where the right of a person to practise as a counselling therapist has been limited by the imposition of conditions or restrictions pursuant to this Act or the regulations, particulars of all conditions or restrictions imposed on that person must be noted in the records of the College and may be disclosed to the public in accordance with this Act. 2008, c. 37, s. 25.

**Register to be changed**

- 26** The Registrar shall make a change in the Register if
- (a) the member's name has been entered in error;
  - (b) notification is received of the member's death;
  - (c) the registration of the member has been revoked;
  - (d) the Complaints Committee, as part of an informal resolution of a complaint, or the Professional Conduct Committee authorizes the resignation of a member from the Register; and
  - (e) the member has requested in writing and the Registrar, as part of an informal resolution of a complaint or otherwise, has approved the resignation of the member,

and such person ceases to be a member of the College. 2008, c. 37, s. 26.

**Removal of name from roster**

**27 (1)** The Registrar shall cause the removal of the name of a member from the appropriate roster

- (a) if the member no longer meets the criteria for entry on the relevant roster;
- (b) at the request of the member, upon surrendering any licence held by the member;
- (c) if notification is received of the member's death;
- (d) for non-payment of fees or other assessments levied under this Act or the regulations;
- (e) if the member has been suspended, for the term of the suspension;
- (f) if the registration of the member has been revoked; or
- (g) if the Complaints Committee, the Professional Conduct Committee or the Registrar authorizes the resignation of a member from the Register.

**(2)** The name of a person removed from the appropriate roster pursuant to clauses (1)(a) to (e) must be restored upon

- (a) payment of the prescribed fee; and
- (b) compliance by the person with this Act and the regulations.

(3) The name of a person removed from the Register pursuant to clause 26(d) or (e) or the appropriate roster pursuant to clause (1)(h) may be restored only if

(a) the Committee or the Registrar authorizing the resignation of the member permitted the member the opportunity to reapply for membership in the College; and

(b) the Reinstatement Committee determines, on such conditions or with such restrictions as it directs, that the registration or licence should be reinstated. 2008, c. 37, s. 27.

#### **Disciplinary findings or complaints from outside Province**

28 (1) A member who engages in the practice of counselling therapy outside the Province and who was subject to any disciplinary findings while outside the Province or has outstanding complaints from outside the Province shall not engage in the practice of counselling therapy upon returning to the Province before providing the Registrar with notice of such disciplinary findings or complaints and receiving from the Registrar a notice authorizing the member to resume the practice of counselling therapy in the Province.

(2) Where the Registrar receives a notice pursuant to subsection (1), the Registrar may file a complaint. 2008, c. 37, s. 28.

#### **Offences and penalty**

29 (1) Every person who

(a) knowingly furnishes false information in any application under this Act or in any statement required to be furnished under this Act or the regulations;

(b) engages in the practice of counselling therapy in violation of any condition or limitation contained in the person's licence; or

(c) otherwise contravenes this Act or the regulations,

is guilty of an offence and liable on summary conviction to a fine of not more than \$2,000 or to imprisonment for a term of not more than six months, or to both.

(2) The *Summary Proceedings Act* applies in addition to any penalty otherwise provided for in this Act or the regulations.

(3) All fines and penalties payable under this Act or under the *Summary Proceedings Act* as a result of a prosecution by or on behalf of the College belong to the College.

(4) Any information to be laid pursuant to this Act or the *Summary Proceedings Act* may be laid by the Registrar or any person authorized by the Registrar.

(5) In a prosecution of an offence contrary to this Act or the regulations, the onus to prove that a person accused of an offence has the right to use a designation protected by this Act is on the person accused.

(6) Where a violation of this Act or the regulations by a person or employer continues for more than one day, the offender is guilty of a separate offence for each day that the violation continues. 2008, c. 37, s. 29.

### **Injunctions**

**30 (1)** In the event of a threatened or continuing violation of this Act or the regulations, the College may apply to a judge for an injunction to restrain the person from continuing or committing the violation and, where the judge considers it to be just, the judge may grant such an injunction.

(2) A judge may, on application, grant an interim injunction pending the hearing of an application for an injunction pursuant to subsection (1) if the judge is satisfied that there is reason to believe that a person is likely to commit or is continuing to commit a violation of this Act or the regulations.

(3) A judge may make such orders as to costs as the judge considers appropriate in any proceedings pursuant to this Section. 2008, c. 37, s. 30.

## **PROFESSIONAL CONDUCT**

### **Professional conduct process**

**31 (1)** In accordance with the objects of the College, the professional conduct process must seek to inhibit professional misconduct, conduct unbecoming a counselling therapist, incompetence and incapacity by investigating, on its own initiative or on the complaints of others, alleged instances of such misconduct, conduct unbecoming a counselling therapist, incompetence or incapacity and, when appropriate, disposing of the matter or matters in accordance with the regulations.

(2) Except when considered prejudicial to the attainment of the objects of the College, the professional conduct process must take into account the potential for the rehabilitation of the respondent. 2008, c. 37, s. 31.

### **Jurisdiction of College continues**

**32** Where a member of the College ceases to be registered or licensed for any reason, such person remains subject to the jurisdiction of the College for the purpose of the professional conduct process if the subject-matter of the professional conduct process arose out of the person's conduct while registered or licensed. 2008, c. 37, s. 32.

### **Complaints Committee**

**33 (1)** The Board shall appoint a Complaints Committee composed of such number of members and public representatives as is determined by the Board.

(2) The Board shall appoint a Chair and a Vice-chair of the Complaints Committee.

(3) The Vice-chair shall act as Chair in the absence of the Chair.

(4) Whenever for any reason neither the Chair nor the Vice-chair are available for the purpose of subsections (5), (6) and (7), the Board may, for such

purpose, appoint a member of the Complaints Committee as chair of the Complaints Committee.

(5) The Chair of the Complaints Committee shall appoint a panel of three persons from the Complaints Committee, one of whom must be a public representative, to act as the Complaints Committee for the purpose of the professional conduct process.

(6) The Chair of the Complaints Committee may sit on the panel and, in such case, shall act as the chair of the panel.

(7) Where the Chair of the Complaints Committee is not appointed to the panel, the Chair of the Complaints Committee shall appoint a chair for such panel.

(8) Any two persons from the panel appointed pursuant to subsection (5), regardless of whether such persons are members or public representatives, constitute a quorum of the Complaints Committee.

(9) Failure of one or more Complaints Committee members to receive any notice of a meeting does not invalidate the proceedings at the meeting, and nothing precludes the members from waiving notice of meetings.

(10) All Complaints Committee decisions require the vote of a majority of the panel of the Complaints Committee appointed pursuant to subsection (5).

(11) Where a proceeding is commenced before the Complaints Committee and the term of office of any person sitting on the Complaints Committee expires, that person may remain part of the Committee until the proceeding is concluded. 2008, c. 37, s. 33.

### Complaints

- 34 (1) A complaint may be initiated by
- (a) any body corporate or association;
  - (b) the Registrar;
  - (c) a committee of the College; or
  - (d) any other person.

(2) Where the College and the complainant agree, a complaint may be withdrawn. 2008, c. 37, s. 34.

### Public Inquiries Act

35 The Complaints Committee has all the powers conferred by this Act and the regulations in the discharge of its functions as well as the powers, privileges and immunities of a commissioner appointed pursuant to the *Public Inquiries Act*. 2008, c. 37, s. 35.

**Procedure and jurisdiction**

**36 (1)** The Complaints Committee may set its own procedure for meetings.

**(2)** The Complaints Committee retains jurisdiction over a matter until such time as a hearing commences before the Professional Conduct Committee or the matter is otherwise resolved by the Professional Conduct Committee. 2008, c. 37, s. 36.

**Complaint to be processed under regulations**

**37** Upon receipt of a complaint, the complaint must be processed in accordance with the regulations. 2008, c. 37, s. 37.

**Publication ban**

**38** With respect to any decision issued by the Complaints Committee that is available to the public pursuant to this Act or the regulations, the Committee may impose a publication ban on such portions of its decision as considered necessary by the Committee. 2008, c. 37, s. 38.

**Proceeding on complaint**

**39 (1)** A complaint must be disposed of in accordance with the regulations.

**(2)** When a complaint is forwarded to the Complaints Committee for disposition, the Committee shall give its decision in writing and shall send a copy of the written decision, by registered mail or personal service, to the respondent and the complainant and may send some or all of the written decision to such other persons as the Committee determines.

**(3)** In a proceeding before the Complaints Committee, a respondent has the right to

(a) be represented by legal counsel or another representative at the expense of the respondent;

(b) disclosure of the complaint, any written reports of the investigator provided to the Complaints Committee and any other document produced or received by the Committee; and

(c) a reasonable opportunity to present a response and make submissions. 2008, c. 37, s. 39.

**Suspension of licence or restrictions**

**40 (1)** Where it is reasonably necessary to protect the public interest, the Complaints Committee may, at its discretion, direct the Registrar to

(a) suspend a licence;

(b) impose restrictions or conditions on a respondent's licence; or

(c) where a person does not hold a current licence, suspend the ability of the person to obtain a licence,

pending or following the completion of an investigation and lasting until the suspension, restrictions or conditions are lifted, superseded or annulled by the Committee or the Professional Conduct Committee, as the case may be.

(2) The member must receive, forthwith, in writing, notice with reasons of a decision made pursuant to subsection (1).

(3) A member of the College who receives written notice pursuant to subsection (2) may request, in writing within 30 days, an opportunity to meet with the Complaints Committee.

(4) Where a request is received pursuant to subsection (3), the Complaints Committee

(a) shall provide an opportunity for the member of the College to meet with the Committee within 10 days of the written request; and

(b) after meeting with the member, may confirm, vary or terminate the suspension imposed pursuant to subsection (1).

(5) Where a meeting is held pursuant to subsection (4), the member has the right to

(a) be represented by legal counsel or another representative at the expense of the member;

(b) disclosure of the complaint, any written report of an investigator provided to the Committee and any other document produced or received by the Committee; and

(c) a reasonable opportunity to present a response and make submissions.

(6) Where a Complaints Committee issues an interim suspension or imposes conditions or restrictions on a respondent's licence, the Committee shall provide a copy of the decision to the complainant and the respondent and determine whether any aspects of the Committee's decision should be provided to other affected individuals, other counselling-therapy jurisdictions, any past, present or intended employer of the respondent or the public. 2008, c. 37, s. 40.

#### **Charges or other proceedings**

**41 (1)** Notwithstanding anything contained in this Act or the regulations, where a person

(a) has been charged with, pleaded guilty to, been convicted or found to be guilty of any offence in or out of Canada that is inconsistent with the proper professional behaviour of a member, including a conviction under

(i) the *Criminal Code* (Canada),

(ii) the *Controlled Drug and Substances Act* (Canada), or

(iii) such other legislation as prescribed in the regulations, unless a pardon has been issued;

(b) has been found guilty of a disciplinary finding in another jurisdiction or another regulated profession;

(c) has had a licensing sanction imposed by another jurisdiction or another regulated profession; or

(d) is the subject of an investigation or disciplinary process in any jurisdiction or in another regulated profession,

and such person is a member or applies for registration or a licence or the renewal of a licence, the Registrar may, by such notice as the Registrar prescribes, require the person to attend a hearing before the Complaints Committee to fully disclose the facts and circumstances of the matters referred to in clauses (a) to (d).

(2) For the purpose of a hearing pursuant to subsection (1), the Complaints Committee may take any of the actions authorized to be taken by the Committee pursuant to this Act or the regulations.

(3) For the purpose of subsection (1), a certificate of conviction of a member is conclusive evidence that the member has committed the offence stated therein, unless it is proven that the conviction has been quashed or set aside.

(4) When a person holding a licence meets the criteria pursuant to subsection (1), that person shall report the matter to the Registrar immediately. 2008, c. 37, s. 41.

### Confidentiality

42 (1) All complaints received or under investigation, all information gathered in the course of the professional conduct process and all proceedings and decisions of the Complaints Committee and the Professional Conduct Committee that are not open to or available to the public in accordance with this Act or the regulations must be kept confidential by the person or persons who possess such information.

(2) Notwithstanding subsection (1), where it is consistent with the objects of the College,

(a) the Registrar, on the recommendation of the Complaints Committee or the Professional Conduct Committee, may disclose to law enforcement authorities any information about possible criminal activity on the part of a member that is obtained during an investigation pursuant to this Act;

(b) the Complaints Committee or the Professional Conduct Committee may authorize the Registrar to release specific information to a specific person or persons;

(c) the Registrar may disclose information with respect to the complaint or a matter before a committee to an extra-provincial counselling-therapy regulatory body when it is relevant and concerns the fitness of the member for membership in the extra-provincial counselling-therapy regulatory body; and

(d) the Registrar may disclose information with respect to a complaint for purposes of the administration of this Act or to comply with the objects of the College.

(3) A witness in any legal proceeding, whether a party thereto or not, is excused from answering any question as to any proceedings of the Complaints Committee, the Professional Conduct Committee or the Reinstatement Committee, and is excused from producing any report, statement, memorandum, recommendation, document or information prepared for purposes of the professional conduct process, including any information gathered in the course of an investigation or produced for the Complaints Committee, the Professional Conduct Committee or the Reinstatement Committee.

(4) Subsection (3) does not apply to documents or records that have been made available to the public by the College.

(5) Unless otherwise determined by a court of competent jurisdiction, a decision of the Complaints Committee or the Professional Conduct Committee is not admissible in a civil proceeding other than an appeal or review pursuant to this Act. 2008, c. 37, s. 42.

#### **Professional Conduct Committee**

43 (1) The Board shall appoint a Professional Conduct Committee composed of such number of members and public representatives as is determined by the Board.

(2) The Board shall appoint a Chair and a Vice-chair of the Professional Conduct Committee.

(3) The Vice-chair shall act as Chair in the absence of the Chair.

(4) Whenever for any reason neither the Chair nor the Vice-chair are available for the purpose of subsections (5), (6) and (7), the Board may, for such purpose, appoint a member of the Professional Conduct Committee as chair of the Professional Conduct Committee.

(5) The Chair of the Professional Conduct Committee shall appoint a panel of five persons from the Committee, at least one of whom must be a public representative, to act as the Professional Conduct Committee for the purpose of the professional conduct process.

(6) The Chair of the Professional Conduct Committee may sit on the panel and shall act as the Chair of the panel in this event.

(7) Where the Chair of the Professional Conduct Committee is not appointed to the panel, the Chair of the Professional Conduct Committee shall appoint a chair for such panel.

(8) Any three persons from the panel appointed pursuant to subsection (5), regardless of whether such persons are members or public representatives, constitute a quorum of the Professional Conduct Committee.

(9) No person on the Professional Conduct Committee may concurrently serve on the Complaints Committee.

(10) Failure of one or more Professional Conduct Committee members to receive any notice of a meeting does not invalidate the proceedings at

the meeting, and nothing precludes Committee members from waiving notice of meetings.

(11) All Professional Conduct Committee decisions require the vote of a majority of the panel of the Committee appointed pursuant to subsection (5) or the quorum of such panel in the event the full panel is not sitting.

(12) Where a proceeding is commenced before the Professional Conduct Committee and the term of office of any person sitting on the Committee expires, that person remains part of the Committee until the proceeding is concluded. 2008, c. 37, s. 43.

### Hearing

44 (1) Where the Complaints Committee refers a matter to the Professional Conduct Committee the Registrar shall, within 30 days from the date of the referral, fix a date, time and place for holding a hearing, which must commence not later than 90 days from the date of the referral by the Complaints Committee, or such later date as the respondent and the College may agree or the Professional Conduct Committee may order following an opportunity for submissions from both parties as to such date.

(2) A notice of hearing, containing such information as required by the regulations, must be forwarded by the Registrar to the respondent and the complainant at least 30 days prior to the hearing. 2008, c. 37, s. 44.

### Service of documents

45 At any stage of the professional conduct process, any document required to be served on or provided to a respondent or any other individual is deemed to be served or provided if

- (a) the intended recipient or their counsel acknowledges receipt of the document;
- (b) a registered mail receipt is provided from Canada Post;
- (c) an affidavit of service on the respondent is provided; or
- (d) the College provides evidence satisfactory to the Professional Conduct Committee that all reasonable efforts to effect service have been exhausted. 2008, c. 37, s. 45.

### Settlement proposal

46 Where the Complaints Committee refers a matter to the Professional Conduct Committee, the College, before the commencement of a hearing by the Professional Conduct Committee, may enter into a settlement proposal with the respondent, which proposal must be dealt with in accordance with the regulations. 2008, c. 37, s. 46.

### Public Inquiries Act

47 Each person on the Professional Conduct Committee has all the rights, powers and privileges of a commissioner appointed pursuant to the *Public Inquiries Act*. 2008, c. 37, s. 47.

**Proceedings to be conducted under regulations**

**48 (1)** A proceeding held by the Professional Conduct Committee must be conducted in accordance with the regulations.

**(2)** In a proceeding before the Professional Conduct Committee, the parties have the right to

- (a) be represented by legal counsel or another representative;
- (b) present evidence and make submissions, including the right to cross-examine witnesses; and
- (c) receive written reasons for a decision within a reasonable time.

**(3)** Evidence is not admissible before the Professional Conduct Committee unless the opposing party has been given, at least 10 days before a hearing,

- (a) in the case of written or documentary evidence, an opportunity to examine the evidence;
- (b) in the case of evidence of an expert, a copy of the expert's written report or, where there is no written report, a written summary of the evidence; or
- (c) in the case of evidence of any other witness, the identity of the witness.

**(4)** Notwithstanding subsection (3), the Professional Conduct Committee may, in its discretion, allow the introduction of evidence that would be otherwise inadmissible under subsection (3) and may make directions it considers necessary to ensure that a party is not prejudiced. 2008, c. 37, s. 48.

**Disposition of matters**

**49 (1)** Where the Professional Conduct Committee finds professional misconduct, conduct unbecoming the profession, incompetence or incapacity, the Committee shall dispose of the matter or matters in accordance with the regulations.

**(2)** Where the Professional Conduct Committee has revoked the registration of a member, the Committee shall determine whether the member is entitled to apply for reinstatement of registration or whether the revocation is final.

**(3)** Where the Professional Conduct Committee determines that a member whose registration has been revoked may apply for reinstatement, the Committee shall determine the time when the member may apply for reinstatement, which cannot be earlier than two years from the date of the Committee's decision. 2008, c. 37, s. 49.

**Reinstatement Committee**

**50 (1)** The Board shall appoint a Reinstatement Committee, composed of not fewer than three and not more than five members of the Board, at least one of whom must be a public representative.

(2) The Board shall appoint the Chair of the Reinstatement Committee.

(3) The Reinstatement Committee shall, in the circumstances set out in this Act and the regulations, review applications for reinstatement of registration and licence, and shall perform such other duties as set out in this Act and the regulations.

(4) A quorum of the Reinstatement Committee consists of any three members of the Committee, regardless of whether such members are members or public representatives.

(5) Applications for reinstatement must proceed in accordance with the regulations.

(6) Where a member's licence has been reinstated pursuant to this Section, the Reinstatement Committee, in its discretion, shall determine whether publication of the reinstatement is required in the interest of the public.

(7) The Reinstatement Committee has all the powers conferred by this Act and the regulations in the discharge of its functions as well as the powers, privileges and immunities of a commissioner appointed pursuant to the *Public Inquiries Act*.

(8) In a proceeding before the Reinstatement Committee, a member has the right to

(a) be represented by legal counsel or another representative at the member's expense;

(b) disclosure of any information to be provided to the Committee; and

(c) a reasonable opportunity to present a response and make submissions.

(9) Evidence is not admissible before the Reinstatement Committee unless, at least 10 days before the hearing, the opposing party has been given

(a) in the case of written or documentary evidence, an opportunity to examine the evidence;

(b) in the case of evidence of an expert, a copy of the expert's written report or, where there is no written report, a written summary of the evidence; and

(c) in the case of evidence of any other witness, the identity of the witness.

(10) Notwithstanding subsection (9), the Reinstatement Committee may, in its discretion, allow the introduction of evidence that is otherwise inadmissible under subsection (9) and may make directions it considers necessary to ensure that a party is not prejudiced. 2008, c. 37, s. 50.

**Records and publication**

**51 (1)** Subject to any publication bans in existence, where a licensing sanction has been issued by the Complaints Committee or the Professional Conduct Committee, the Registrar shall

(a) make such entries on the records of the College and on the licence of the member as set out in the regulations;

(b) publish such information on the website of the College and in official publications of the College as set out in the regulations;

(c) notify other counselling-licensing bodies as set out in the regulations; and

(d) provide such information to individuals or the public as set out in the regulations.

**(2)** Where the Professional Conduct Committee dismisses a matter, it shall disclose its decision in such manner as it determines. 2008, c. 37, s. 51.

**Expiry of suspension**

**52 (1)** Where the period of suspension of a member has expired, or the conditions imposed on the member have been satisfied, or the restrictions imposed on the member have been removed, the Registrar shall restore the licence to the member in the form it existed prior to the imposition of the suspension, conditions or restrictions, if the member otherwise meets the criteria for the issuing of a licence, but where the licence has expired, the member shall pay the prescribed fee for renewal of the licence before its reissue.

**(2)** Where action has been taken pursuant to subsection (1), the Registrar shall

(a) make the appropriate entries in the records of the College;

(b) where registering bodies in other Canadian counselling-therapy jurisdictions had previously been informed of the suspension, conditions or restrictions, notify such registering bodies of the lifting of such suspension, conditions or restrictions; and

(c) notify such other persons as directed by the committee that initially imposed the suspension, conditions or restrictions. 2008, c. 37, s. 52.

**Power to retain assistance**

**53 (1)** For the purpose of the execution of their duties under this Act, the College or any committee of the College, may retain such legal or other assistance as the College or the committee thinks necessary or proper.

**(2)** Where authorized by this Act or the regulations, the costs of such legal or other assistance may be included, in whole or in part, as costs ordered by the committee. 2008, c. 37, s. 53.

**Appeal**

**54** (1) A party may appeal on any point of law from the findings of the Professional Conduct Committee to the Nova Scotia Court of Appeal.

(2) The notice of appeal must be filed at the Nova Scotia Court of Appeal and served upon the other party not later than 30 days after service of the decision of the Professional Conduct Committee.

(3) The record on appeal from the findings of the Professional Conduct Committee consists of a copy of the transcript of the proceedings, the decision of the Committee and the evidence before the Committee certified by the Chair of the Committee.

(4) The *Civil Procedure Rules* governing appeals from the Supreme Court of Nova Scotia to the Nova Scotia Court of Appeal that are not inconsistent with this Act, apply with necessary changes to appeals to the Court of Appeal pursuant to this Section.

(5) Where a matter is appealed to the Nova Scotia Court of Appeal pursuant to this Section, the decision of the Professional Conduct Committee takes effect immediately unless the Court of Appeal grants a stay of any order made pursuant to this Act where, in its discretion, it considers fit. 2008, c. 37, s. 54.

**PROFESSIONAL INCORPORATION****Nothing in Act prevents incorporation**

**55** Nothing in this Act prevents the incorporation of a counselling therapist, but every counselling therapist continues to be personally responsible for compliance with this Act and the regulations notwithstanding any such incorporation. 2008, c. 37, s. 55.

**Liability for acts or omissions**

**56** All members who carry on the practice of counselling therapy as, by, through or on behalf of an incorporated entity are liable in respect of acts or omissions done or omitted to be done by them in the course of their practice to the same extent and in the same manner as if the practice of counselling therapy were carried on by them as an individual or a partnership carrying on the practice of the profession. 2008, c. 37, s. 56.

**Relationship with counsellee**

**57** Where a member is engaged in the practice of counselling therapy as an incorporated entity, the existence of the incorporated entity does not affect, modify or limit any law or standard applicable to the confidential or ethical relationship between a counselling therapist and a counsellee. 2008, c. 37, s. 57.

**Compellability of witnesses**

**58** All shareholders, directors, officers and employees of an incorporated entity engaged in the practice of counselling therapy are compellable witnesses in any proceedings pursuant to this Act. 2008, c. 37, s. 58.

**Powers of inspection, investigation or inquiry apply**

**59** Where the conduct of a counselling therapist is the subject of a complaint, investigation or inquiry and the counselling therapist was an officer, director, shareholder or employee of an incorporated entity at the time the conduct occurred, any power of inspection, investigation or inquiry that may be exercised in respect of the counselling therapist or the counselling therapist's records may be exercised in respect of the incorporated entity or its records. 2008, c. 37, s. 59.

**Offences by incorporated entities**

**60 (1)** Every incorporated entity engaged in the practice of counselling therapy that contravenes this Act or the regulations is guilty of an offence and liable to the same penalties as any person who is guilty of an offence pursuant to this Act.

**(2)** Sections 29 and 30 apply with necessary changes to all incorporated entities engaged in the practice of counselling therapy. 2008, c. 37, s. 60.

## GENERAL

**Member's duty to report**

**61 (1)** A member has a duty to report to the Registrar if the member has reasonable grounds to believe that another member of the College

- (a) has engaged in professional misconduct, incompetence or conduct unbecoming the profession;
- (b) is incapacitated; or
- (c) is practising in a manner that otherwise constitutes a danger to the public.

**(2)** No action for damages or other relief lies against a member for any report made pursuant to subsection (1) if the report was made in good faith. 2008, c. 37, s. 61.

**Fines and costs are debts due to College**

**62** Any fine or cost ordered to be paid pursuant to this Act or the regulations is a debt due to the College recoverable by civil action, in addition to any other remedy available to the College for non payment of a fine or cost. 2008, c. 37, s. 62.

**No action lies**

**63 (1)** No action for damages or other relief lies against the College, the Board, the persons on the Board, committees or subcommittees of the College or the Board, or the persons on the committees or subcommittees, or the Registrar, officers, agents or employees of the College,

- (a) for any act or failure to act or any proceeding initiated or taken in good faith under this Act, or in carrying out the duties or obligations under this Act; or
- (b) for any decision, order or resolution made or enforced in good faith under this Act.

(2) No action lies against any person for the disclosure of any information or any document or anything therein pursuant to this Act unless such disclosure is made with malice.

(3) No member of the College, the Board, committees or subcommittees of the College or the Board, or any officer, agent, or employee thereof is personally liable for any of the debts or liabilities of the College unless such person expressly agrees to be liable. 2008, c. 37, s. 63.

**Power to appoint additional committee members**

64 Whenever for any reason a quorum of members of any committee may not be available for a meeting or hearing, the Board may, for the purpose of such meeting or hearing, appoint to the committee such additional members as are needed for a quorum. 2008, c. 37, s. 65.

**Act does not prohibit**

65 Nothing in this Act prohibits the carrying out of the practice of counselling therapy by any person who does not take or use the designation “Counselling Therapist”, “Registered Counselling Therapist”, “Registered Counselling Therapist Candidate” or “RCT”, or any derivation or abbreviation thereof, or describes the person’s activities as “counselling therapy” in any advertisement or publication, including business cards, websites or signage. 2008, c. 37, s. 66.

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CHAPTER C-68

**An Act Respecting Court Jurisdiction  
and the Transfer of Court Proceedings**

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**Short title**

**1** This Act may be cited as the *Court Jurisdiction and Proceedings Transfer Act*. 2003 (2nd Sess.), c. 2, s. 1.

**Interpretation**

**2** In this Act,  
“person” includes a state;  
“plaintiff” means a person who commences a proceeding, and includes a plaintiff by way of counter-claim or third-party claim;

“proceeding” means an action, suit, cause, matter or originating application, and includes a procedure and a preliminary motion;

“procedure” means a procedural step in a proceeding;

“state” means

- (a) Canada or a province of Canada; and
- (b) a foreign country or a subdivision of a foreign country;

“subject-matter competence” means the aspects of a court’s jurisdiction that depend on factors other than those pertaining to the court’s territorial competence;

“Supreme Court” means the Supreme Court of Nova Scotia;

“territorial competence” means the aspects of a court’s jurisdiction that depend on a connection between

- (a) the territory or legal system of the state in which the court is established; and
- (b) a party to a proceeding in the court or the facts on which the proceeding is based. 2003 (2nd Sess.), c. 2, s. 2.

## PART I

### TERRITORIAL COMPETENCE OF COURTS OF NOVA SCOTIA

#### **Territorial competence of court**

**3 (1)** In this Part, “court” means a court of the Province unless the context otherwise requires.

**(2)** The territorial competence of a court is to be determined solely by reference to this Part. 2003 (2nd Sess.), c. 2, s. 3.

#### **Proceedings against persons**

**4** A court has territorial competence in a proceeding that is brought against a person only if

- (a) that person is the plaintiff in another proceeding in the court to which the proceeding in question is a counter-claim;
- (b) during the course of the proceeding that person submits to the court’s jurisdiction;
- (c) there is an agreement between the plaintiff and that person to the effect that the court has jurisdiction in the proceeding;
- (d) that person is ordinarily resident in the Province at the time of the commencement of the proceeding; or
- (e) there is a real and substantial connection between the Province and the facts on which the proceeding against that person is based. 2003 (2nd Sess.), c. 2, s. 4.

**Proceedings with no named defendants**

**5** A court has territorial competence in a proceeding that is not brought against a person or a vessel if there is a real and substantial connection between the Province and the facts upon which the proceeding is based. 2003 (2nd Sess.), c. 2, s. 5.

**Proceedings against vessels**

**6** A court has territorial competence in a proceeding that is brought against a vessel if the vessel is served or arrested in the Province. 2003 (2nd Sess.), c. 2, s. 6.

**General discretion**

**7** A court that under Section 4 lacks territorial competence in a proceeding may hear the proceeding notwithstanding that Section if it considers that

- (a) there is no court outside the Province in which the plaintiff can commence the proceeding; or
- (b) the commencement of the proceeding in a court outside the Province cannot reasonably be required. 2003 (2nd Sess.), c. 2, s. 7.

**Ordinary residence of corporation**

**8** A corporation is ordinarily resident in the Province, for the purpose of this Part, only if

- (a) the corporation has, or is required by law to have, a registered office in the Province;
- (b) pursuant to law, it
  - (i) has registered an address in the Province at which process may be served generally, or
  - (ii) has nominated an agent in the Province upon whom process may be served generally;
- (c) it has a place of business in the Province; or
- (d) its central management is exercised in the Province. 2003 (2nd Sess.), c. 2, s. 8.

**Ordinary residence of partnership**

**9** A partnership is ordinarily resident in the Province, for the purpose of this Part, only if

- (a) the partnership has, or is required by law to have, a registered office or business address in the Province;
- (b) it has a place of business in the Province; or
- (c) its central management is exercised in the Province. 2003 (2nd Sess.), c. 2, s. 9.

**Ordinary residence of unincorporated society**

**10** An unincorporated association is ordinarily resident in the Province, for the purpose of this Part, only if

- (a) an officer of the association is ordinarily resident in the Province; or
- (b) the association has a location in the Province for the purpose of conducting its activities. 2003 (2nd Sess.), c. 2, s. 10.

**Presumption of real and substantial connection**

**11** Without limiting the right of the plaintiff to prove other circumstances that constitute a real and substantial connection between the Province and the facts on which a proceeding is based, a real and substantial connection between the Province and those facts is presumed to exist if the proceeding

- (a) is brought to enforce, assert, declare or determine proprietary or possessory rights or a security interest in immovable or movable property in the Province;
- (b) concerns the administration of the estate of a deceased person in relation to
  - (i) immovable property of the deceased person in the Province, or
  - (ii) movable property anywhere of the deceased person if, at the time of death, the person was ordinarily resident in the Province;
- (c) is brought to interpret, rectify, set aside or enforce any deed, will, contract or other instrument in relation to
  - (i) immovable or movable property in the Province, or
  - (ii) movable property anywhere of a deceased person who, at the time of death, was ordinarily resident in the Province;
- (d) is brought against a trustee in relation to the carrying out of a trust in any of the following circumstances:
  - (i) the trust assets include immovable or movable property in the Province and the relief claimed is only as to that property,
  - (ii) that trustee is ordinarily resident in the Province,
  - (iii) the administration of the trust is principally carried on in the Province,
  - (iv) by the express terms of a trust document, the trust is governed by the law of the Province;
- (e) concerns contractual obligations, and
  - (i) the contractual obligations, to a substantial extent, were to be performed in the Province,
  - (ii) by its express terms, the contract is governed by the law of the Province, or
  - (iii) the contract
    - (A) is for the purchase of property, services or both, for use other than in the course of the purchaser's trade or profession, and

- (B) resulted from a solicitation of business in the Province by or on behalf of the seller;
- (f) concerns restitutionary obligations that, to a substantial extent, arose in the Province;
- (g) concerns a tort committed in the Province;
- (h) concerns a business carried on in the Province;
- (i) is a claim for an injunction ordering a party to do or refrain from doing anything
  - (i) in the Province, or
  - (ii) in relation to immovable or movable property in the Province;
- (j) is for a determination of the personal status or capacity of a person who is ordinarily resident in the Province;
- (k) is for enforcement of a judgment of a court made in or outside the Province or an arbitral award made in or outside the Province; or
- (l) is for the recovery of taxes or other indebtedness and is brought by the Crown in right of the Province or of Canada or by a municipality or other local authority of the Province. 2003 (2nd Sess.), c. 2, s. 11.

#### **Court may decline territorial competence**

**12 (1)** After considering the interests of the parties to a proceeding and the ends of justice, a court may decline to exercise its territorial competence in the proceeding on the ground that a court of another state is a more appropriate forum in which to hear the proceeding.

**(2)** A court, in deciding the question of whether it or a court outside the Province is the more appropriate forum in which to hear a proceeding, must consider the circumstances relevant to the proceeding, including

- (a) the comparative convenience and expense for the parties to the proceeding and for their witnesses, in litigating in the court or in any alternative forum;
- (b) the law to be applied to issues in the proceeding;
- (c) the desirability of avoiding multiplicity of legal proceedings;
- (d) the desirability of avoiding conflicting decisions in different courts;
- (e) the enforcement of an eventual judgment; and
- (f) the fair and efficient working of the Canadian legal system as a whole. 2003 (2nd Sess.), c. 2, s. 12.

#### **Conflict with other Acts**

**13** Where there is a conflict or inconsistency between this Part and another Act of the Province or of Canada that expressly

- (a) confers jurisdiction or territorial competence on a court; or

(b) denies jurisdiction or territorial competence to a court, that other Act prevails. 2003 (2nd Sess.), c. 2, s. 13.

## PART II

### TRANSFER OF A PROCEEDING

#### General provisions applicable to transfer

**14 (1)** The Supreme Court, in accordance with this Part, may

- (a) transfer a proceeding to a court outside the Province; or
- (b) accept a transfer of a proceeding from a court outside the Province.

**(2)** A power given under this Part to the Supreme Court to transfer a proceeding to a court outside the Province includes the power to transfer part of the proceeding to that court.

**(3)** A power given under this Part to the Supreme Court to accept a proceeding from a court outside the Province includes the power to accept part of the proceeding from that court.

**(4)** Where anything relating to a transfer of a proceeding is or ought to be done in the Supreme Court or in another court on appeal from the Supreme Court, the transfer is governed by this Part.

**(5)** Where anything relating to a transfer of a proceeding is or ought to be done in a court outside the Province, the Supreme Court, notwithstanding any differences between this Part and the rules applicable in the court outside the Province, may transfer or accept a transfer of the proceeding if the Supreme Court considers that the differences do not

- (a) impair the effectiveness of the transfer; or
  - (b) inhibit the fair and proper conduct of the proceeding.
- 2003 (2nd Sess.), c. 2, s. 14.

#### Grounds for transfer

**15 (1)** The Supreme Court, by order, may request a court outside the Province to accept a transfer of a proceeding in which the Supreme Court has both territorial and subject-matter competence if the Supreme Court is satisfied that

- (a) the receiving court has subject-matter competence in the proceeding; and
- (b) under Section 12, the receiving court is a more appropriate forum for the proceeding than the Supreme Court.

**(2)** The Supreme Court, by order, may request a court outside the Province to accept a transfer of a proceeding in which the Supreme Court lacks territorial or subject-matter competence if the Supreme Court is satisfied that the receiving court has both territorial and subject-matter competence in the proceeding.

(3) In deciding whether a court outside the Province has territorial or subject-matter competence in a proceeding, the Supreme Court must apply the laws of the state in which the court outside the Province is established. 2003 (2nd Sess.), c. 2, s. 15; 2010, c. 48, s. 1.

#### **Provisions relating to transfer orders**

**16 (1)** In an order requesting a court outside the Province to accept a transfer of a proceeding, the Supreme Court must state the reasons for the request.

(2) The order may

- (a) be made on application of a party to the proceeding;
- (b) impose conditions precedent to the transfer;
- (c) contain terms concerning the further conduct of the proceeding; and
- (d) provide for the return of the proceeding to the Supreme Court on the occurrence of specified events.

(3) On its own motion or, where asked by the receiving court, the Supreme Court, on or after making an order requesting a court outside the Province to accept a transfer of a proceeding, may

- (a) send to the receiving court relevant portions of the record to aid that court in deciding whether to accept the transfer or to supplement material previously sent by the Supreme Court to the receiving court in support of the order; or
- (b) by order, rescind or modify one or more terms of the order requesting acceptance of the transfer. 2003 (2nd Sess.), c. 2, s. 16.

#### **Supreme Court can accept or refuse transfer**

**17 (1)** After the filing of a request made by a court outside the Province to transfer to the Supreme Court a proceeding brought against a person in the transferring court, the Supreme Court by order may

- (a) subject to subsection (4), accept the transfer if both of the following requirements are fulfilled:
  - (i) either the Supreme Court or the transferring court has territorial competence in the proceeding, and
  - (ii) the Supreme Court has subject-matter competence in the proceeding; or
- (b) refuse to accept the transfer for any reason that the Supreme Court considers just, regardless of the fulfillment of the requirements of clause (a).

(2) The Supreme Court must give reasons for an order under clause (1)(b) refusing to accept the transfer of a proceeding.

(3) Any party to the proceeding brought in the transferring court may apply to the Supreme Court for an order accepting or refusing the transfer to the Supreme Court of the proceeding.

(4) The Supreme Court may not make an order accepting the transfer of a proceeding if a condition precedent to the transfer imposed by the transferring court has not been fulfilled. 2003 (2nd Sess.), c. 2, s. 17; 2010, c. 48, s. 2.

#### **Effect of transfer**

**18** A transfer of a proceeding to or from the Supreme Court takes effect for all purposes of the law of the Province when an order made by the receiving court accepting the transfer is filed in the transferring court. 2003 (2nd Sess.), c. 2, s. 18.

#### **Transfers to courts outside Province**

**19 (1)** On a transfer of a proceeding from the Supreme Court taking effect,

(a) the Supreme Court must send relevant portions of the record, if not sent previously, to the receiving court; and

(b) subject to subsections (2) and (3), the proceeding continues in the receiving court.

**(2)** After the transfer of a proceeding from the Supreme Court takes effect, the Supreme Court may make an order with respect to a procedure that was pending in the proceeding at the time of the transfer only if

(a) it is unreasonable or impracticable for a party to apply to the receiving court for the order; and

(b) the order is necessary for the fair and proper conduct of the proceeding in the receiving court.

**(3)** After the transfer of a proceeding from the Supreme Court takes effect, the Supreme Court may discharge or amend an order made in the proceeding before the transfer took effect only if the receiving court lacks territorial competence to discharge or amend the order. 2003 (2nd Sess.), c. 2, s. 19.

#### **Transfers to Supreme Court**

**20 (1)** On a transfer of a proceeding to the Supreme Court taking effect, the proceeding continues in the Supreme Court.

**(2)** A procedure completed in a proceeding in the transferring court before transfer of the proceeding to the Supreme Court has the same effect in the Supreme Court as in the transferring court, unless the Supreme Court otherwise orders.

**(3)** Where a procedure is pending in a proceeding at the time of the transfer of the proceeding to the Supreme Court takes effect, the procedure must be completed in the Supreme Court in accordance with the rules of the transferring court, measuring applicable time limits as if the procedure had been initiated 10 days after the transfer took effect, unless the Supreme Court otherwise orders.

**(4)** After the transfer of a proceeding to the Supreme Court takes effect, the Supreme Court may discharge or amend an order made in the proceeding by the transferring court.

(5) An order of the transferring court that is in force at the time the transfer of a proceeding to the Supreme Court takes effect remains in force after the transfer until discharged or amended by

- (a) the transferring court, if the Supreme Court lacks territorial competence to discharge or amend the order; or
- (b) the Supreme Court, in any other case. 2003 (2nd Sess.), c. 2, s. 20.

#### **Return of proceeding after transfer**

**21 (1)** After the transfer of a proceeding to the Supreme Court takes effect, the Supreme Court must order the return of the proceeding to the court from which the proceeding was received if

- (a) the terms of the transfer provide for the return;
- (b) both the Supreme Court and the court from which the proceeding was received lack territorial competence in the proceeding; or
- (c) the Supreme Court lacks subject-matter competence in the proceeding.

(2) Where a court to which the Supreme Court has transferred a proceeding orders that the proceeding be returned to the Supreme Court in any of the circumstances referred to in clause (1)(a), (b) or (c), or in similar circumstances, the Supreme Court must accept the return.

(3) When a return order is filed in the Supreme Court, the returned proceeding continues in the Supreme Court. 2003 (2nd Sess.), c. 2, s. 21.

#### **Appeals**

**22 (1)** After the transfer of a proceeding to the Supreme Court takes effect, an order of the transferring court, except the order requesting the transfer, may be appealed in the Province with leave of the court of appeal of the receiving court as if the order had been made by the Supreme Court.

(2) A decision of a court outside the Province to accept the transfer of a proceeding from the Supreme Court may not be appealed in the Province.

(3) Where, at the time that the transfer of a proceeding from the Supreme Court takes effect, an appeal is pending in the Province from an order of the Supreme Court, the court in which the appeal is pending may conclude the appeal only if

- (a) it is unreasonable or impracticable for the appeal to be recommenced in the state of the receiving court; and
- (b) a resolution of the appeal is necessary for the fair and proper conduct of the continued proceeding in the receiving court. 2003 (2nd Sess.), c. 2, s. 22.

**Departure from term of transfer**

**23** After the transfer of a proceeding to the Supreme Court takes effect, the Supreme Court may depart from terms specified by the transferring court in the transfer order, if it is just and reasonable to do so. 2003 (2nd Sess.), c. 2, s. 23.

**Limitations and time periods**

**24 (1)** In a proceeding transferred to the Supreme Court from a court outside the Province, and notwithstanding any enactment imposing a limitation period, the Supreme Court must not hold a claim barred because of a limitation period if

(a) the claim would not be barred under the limitation rule that would be applied by the transferring court; and

(b) at the time the transfer took effect, the transferring court had both territorial and subject-matter competence in the proceeding.

**(2)** After a transfer of a proceeding to the Supreme Court takes effect, the Supreme Court must treat a procedure commenced on a certain date in a proceeding in the transferring court as if the procedure had been commenced in the Supreme Court on the same date. 2003 (2nd Sess.), c. 2, s. 24.

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CHAPTER C-69

**An Act to Provide for the Appointment  
and Duties of Court Officials**

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**Short title**

**1** This Act may be cited as the *Court Officials Act*. R.S., c. 373, s. 1; 1996, c. 23, s. 27.

**Personnel**

**2** There must be appointed, in accordance with the *Civil Service Act*, court administrators and such other officers and employees as are considered necessary for the administration of the courts in the Province. 1996, c. 23, s. 28.

**Powers and duties**

**3 (1)** A court administrator appointed pursuant to Section 2 shall perform the powers and duties set out in the appointment or prescribed by the Minister of Justice and, without limiting the generality of the foregoing, the powers and duties of a court administrator may include the powers and duties formerly performed by a court reporter, prothonotary and clerk of the Crown, sheriff or court clerk.

**(2)** An officer or employee appointed pursuant to Section 2 shall perform the powers and duties set out in the appointment. 1996, c. 23, s. 28.

**Assignment of power or duty**

**4 (1)** A power or duty given to a court administrator, officer or employee pursuant to this Act, another enactment or a rule of court may be exercised or performed by a person or class of persons to whom the power or duty has been assigned by the Deputy Minister of Justice or a person designated by the Deputy Minister.

(2) Subsection (1) applies in respect of an enactment or rule of court made pursuant to the authority of the Legislature or of the Parliament of Canada. 1996, c. 23, s. 28.

#### Office hours

5 The Minister of Justice may prescribe the days and hours during which any office related to the administration of the courts in the Province must be open. 1996, c. 23, s. 28.

#### Oath

6 Every court administrator, officer or employee appointed pursuant to this Act shall take the oath that is prescribed in the regulations with respect to any office that the person may be performing. 1996, c. 23, s. 28.

#### Officers of court

7 Every court administrator, officer or employee appointed pursuant to this Act is an officer of the court in respect of which that person serves and that person shall obey the orders of the court and of a judge of the court. 1996, c. 23, s. 28.

#### Prohibition

8 No person, other than a person appointed pursuant to this Act, shall transcribe proceedings of a court unless the person is certified by the Minister of Justice or by a person designated by the Minister of Justice. 1996, c. 23, s. 28.

#### Official record

9 A record of the proceedings of a court certified in the manner prescribed in the regulations is the official record of the proceedings. 1996, c. 23, s. 28.

#### Fees and expenses

10 (1) A person appointed pursuant to this Act to perform the duties previously performed by a sheriff is, for services performed, entitled to the fees and allowances specified in that behalf in the *Costs and Fees Act*.

(2) The plaintiff or other party at whose suit or instance any process is issued, and the barrister who issued the process, are severally liable to pay to a sheriff the fees and expenses of service or execution. 1996, c. 23, s. 28.

#### Regulations

- 11 (1) The Governor in Council may make regulations
- (a) prescribing oaths;
  - (b) prescribing fees;
  - (c) respecting the certification of court proceedings;
  - (d) defining any word or expression used but not defined in this Act;
  - (e) respecting any matter or thing considered necessary or advisable to carry out effectively the intent and purpose of this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*, 1996, c. 23, s. 28.

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CHAPTER C-70

**An Act Respecting Court Security**

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**Short title**

**1** This Act may be cited as the *Court Security Act*. 1990, c. 7, s. 1.

**Interpretation**

**2** In this Act,

“court” means the Supreme Court of Nova Scotia, a probate court, the Family Court, a youth court, the Small Claims Court, a judge of the Provincial Court or a justice of the peace;

“court area” means an area that is used for the purpose of a court, whether or not the public is normally admitted to the area, and, without restricting the generality of the foregoing, includes an area that is used for conducting court proceedings, for a judge’s chambers or judge’s office or for an office or workplace used for the purposes of a court and any common areas used in connection with such areas;

“weapon” has the same meaning as in the *Criminal Code* (Canada). 1990, c. 7, s. 2.

**Security officers**

**3 (1)** For the purpose of providing security in a court area, the Attorney General may appoint security officers.

**(2)** Every security officer appointed pursuant to subsection (1) has, for the purpose of this Act, the powers of a peace officer. 1990, c. 7, s. 3.

**Entry to court area**

**4** A security officer may

(a) require a person to satisfy the security officer as to the person’s identity; and

(b) where the security officer is not satisfied that the person is a peace officer, an officer of the court or a person authorized by the regulations to have possession of a weapon in a court area, screen the person for weapons,

before the person enters a court area or at any time while the person is within a court area and, where the security officer is not satisfied as to the person's identity, the person refuses to be screened for weapons or the person is carrying a weapon, the security officer may refuse the person entry to the court area and use as much force as is reasonably necessary to prevent such entry or, where the person is in the court area, may require the person to leave the court area and use as much force as is reasonably necessary to force the person to leave. 1990, c. 7, s. 4.

### Offences

**5 (1)** Every person who enters or attempts to enter a court area after having been refused permission to enter or after having been requested to leave by a security officer is guilty of an offence.

**(2)** Every person who has a weapon in that person's possession in a court area, other than a peace officer, officer of the court in the performance of the officer's duties or a person authorized by the regulations, is guilty of an offence. 1990, c. 7, s. 5.

### Removal of persons from court area

**6 (1)** A security officer shall require a person to leave a court area where the security officer is directed to do so by a judge and may use such force as is reasonably necessary to force the person to leave.

**(2)** Where a judge is not present in a court area, a security officer may require a person who is causing a disturbance in a court area to leave the court area and may use such force as is reasonably necessary to force the person to leave.

**(3)** A person causes a disturbance within the meaning of subsection (2) where that person

- (a) fights, screams, shouts, swears, sings or uses insulting or obscene language;
- (b) is impaired by alcohol or drugs; or
- (c) impedes or molests other persons. 1990, c. 7, s. 6.

### Offence of illegal entry to restricted area

**7** Every person who enters or attempts to enter or remains in an area that, pursuant to the regulations, is an area in a courthouse to which access is restricted to designated persons and that is identified as such, pursuant to the regulations, is guilty of an offence unless that person is a person who is designated pursuant to clause 9(b). 1990, c. 7, s. 7.

### Power of judge unaffected

**8** Nothing in this Act derogates from or is intended to replace the power of a judge, whether established by common law or otherwise, to control the proceedings of the court. 1990, c. 7, s. 8.

**Regulations****9**

- (1)** The Governor in Council may make regulations
- (a) providing for the organization, coordination, supervision, discipline and control of security officers;
  - (b) designating persons authorized to have possession of weapons in a court area;
  - (c) respecting the establishment of areas in a courthouse to which access is restricted to designated persons and respecting the manner in which such areas are to be identified;
  - (d) defining any word or expression used in this Act but not defined herein;
  - (e) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.

**(2)** The exercise by the Governor in Council of the power contained in subsection (1) is a regulation within the meaning of the *Regulations Act*, 1990, c. 7, s. 9.

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CHAPTER C-71

**An Act Respecting  
Courthouses and Lockup Houses**

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**Short title**

**1** This Act may be cited as the *Courthouses and Lockup Houses Act*.  
R.S., c. 109, s. 1.

ESTABLISHMENT AND MAINTENANCE  
OF COURTHOUSES

**Location of courthouse**

**2** A courthouse may lawfully be situate in the municipal district or in any incorporated town that formerly was a part of such district and such courthouse is deemed to be situate in such district. R.S., c. 109, s. 2.

**General**

- 3** (1) In this Section,  
“Minister” means the Minister of Justice;  
“municipality” means a regional municipality, incorporated town or municipality of a county or district.
- (2) With the approval of the Governor in Council,

(a) the Minister may establish courthouses and courthouse facilities; and

(b) the Minister may enter into an agreement with a municipality respecting the takeover of courthouse facilities, including the conveyance, reconveyance or leasing of courthouse facilities.

(3) A municipality has the necessary power and authority to enter into and carry out an agreement referred to in clause (2)(b) with the Minister and, notwithstanding any other Act, any lease or conveyance of property pursuant to an agreement does not require the consent of the Minister of Municipal Affairs and Housing.

(4) The assets and liabilities of the Halifax County Courthouse Commission are vested in the Crown in right of the Province.

(5) Where the Minister and a municipality are unable to reach an agreement pursuant to clause (2)(b) respecting a courthouse or courthouse facility used primarily for the administration of justice, the Minister, with the approval of the Governor in Council, may require the municipality to and the municipality shall convey the courthouse or courthouse facility, as the case may be, to the Crown in right of the Province and the municipality is not entitled to any compensation except as provided in subsection (6).

(6) Upon a courthouse or courthouse facility being conveyed pursuant to subsection (5), the Minister is responsible for the payment of all debt charges respecting the courthouse or courthouse facility.

(7) When a courthouse or courthouse facility conveyed to the Crown in right of the Province pursuant to subsection (5) is no longer required by the Minister for the administration of justice, the Crown shall reconvey the courthouse or courthouse facility, as the case may be, to the municipality and the Crown shall cease payment of debt charges pursuant to subsection (6) in respect of it. 1994-95, c. 7, s. 21.

## LOCKUP HOUSES

### **Powers of town council**

4 The council of every incorporated town may establish, alter, add to, repair and maintain a lockup house in the town, appoint a keeper thereof, and provide for the payment of the remuneration of the keeper and the management and regulation of the lockup house. R.S., c. 109, s. 7.

### **Powers of municipal council**

5 The council of every municipality may establish, alter, add to, repair and maintain a lockup house for the municipality or for any polling district or districts in the same, appoint the keeper or keepers thereof, and provide for the payment of the remuneration of the keeper or keepers and the management and regulation of the lockup house or lockup houses. R.S., c. 109, s. 8.

**Joint-use lockup house**

6 Any municipality may unite with any incorporated town in establishing a lockup house for the joint use of the municipality or town, and the keeper of the lockup house may be appointed, and the remuneration of the keeper and the cost of erecting, altering, adding to and maintaining the lockup house and keeping the same in repair may be provided, in such manner as is agreed upon between the municipality or town. R.S., c. 109, s. 9.

**Keeper**

7 Every lockup house must be placed in charge of a constable or police officer specially designated for that purpose and the keeper is responsible for the safe custody of prisoners confined therein. R.S., c. 109, s. 10.

**Detention and imprisonment**

8 Any person arrested or held upon any warrant issued by a judge of the Provincial Court or justice of the peace or on any process issued with respect to any criminal or penal matter, may be detained in a lockup house pending the hearing and determination of the charge or matter with respect to which the person is arrested or held, and any person ordered or directed to be imprisoned by any conviction or commitment may be imprisoned in a lockup house until the person can conveniently be removed to a jail or penitentiary. R.S., c. 109, s. 11.

**Civil detention**

9 Any person arrested in any civil action or proceeding may be detained in a lockup house until the person can conveniently be removed to a jail, but no such detention may be for more than 48 hours. R.S., c. 109, s. 12.

## GENERAL

**Approval by Governor in Council**

10 No lockup house may hereafter be erected and no existing lockup house may be enlarged, altered or remodelled until the plans and specifications for all work in connection with the erection, enlargement, alteration or remodelling are submitted to and approved by the Governor in Council. R.S., c. 109, s. 13.

**Powers of Governor in Council**

11 The Governor in Council may require a municipality or town to make any lockup house suitable for the purpose for which the same is established by enlarging, altering, repairing, adding to or remodelling the same or in such other manner as the Governor in Council directs, and if the municipality or town upon being so required does not make the lockup house suitable for such purpose as required, the lockup house may be enlarged, altered, repaired, added to, remodelled and made suitable by the Governor in Council, and the expense of so doing is a charge upon the municipality or town. R.S., c. 109, s. 14.

**Regulations**

- 12 (1) The Governor in Council may make regulations
- (a) respecting the operation, management, supervision, administration and inspection of lockup facilities;

(b) respecting the admission, care, custody, control, maintenance, transfer, privileges, release and discharge of inmates;

(c) respecting the transportation of inmates to, from and between lockup facilities;

(d) respecting the care, custody, control and treatment of mentally, physically or socially handicapped inmates;

(e) respecting medical attendance on inmates;

(f) respecting the maintenance, preservation and destruction of records;

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

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

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. R.S., c. 109, s. 15.

CHAPTER C-72

**An Act to Establish  
the Creative Nova Scotia Leadership Council —  
Conseil de leadership pour la création  
en Nouvelle-Écosse**

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

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**Short title**

**1** This Act may be cited as the *Creative Nova Scotia Leadership Council Act*. 2011, c. 34, s. 1.

**Interpretation**

**2** In this Act,

“bylaw” means a resolution of the Council designated by the Council as a bylaw and passed by a majority of at least two thirds of the Council;

“Council” means the Creative Nova Scotia Leadership Council — Conseil de leadership pour la création en Nouvelle-Écosse established by this Act;

“creative” includes all aspects of Nova Scotia’s culture sector and culturally diverse and vibrant communities;

“member” means a member of the Council;

“Minister” means the Minister of Communities, Culture, Tourism and Heritage. 2011, c. 34, s. 2.

### **Supervision of Act**

**3** The Minister has the general supervision and management of this Act. 2011, c. 34, s. 3.

### **Creative Nova Scotia Leadership Council —**

#### **Conseil de leadership pour la création en Nouvelle-Écosse**

**4** A body corporate to be known as the Creative Nova Scotia Leadership Council — Conseil de leadership pour la création en Nouvelle-Écosse is established. 2011, c. 34, s. 4.

### **Objects**

**5** The objects of the Council are to provide advice to government on matters related to

- (a) promoting cultural vibrancy in the Province;
- (b) encouraging community spirit through creative endeavours and pursuits throughout the Province;
- (c) undertaking activities that facilitate the development, promotion and preservation of arts and culture and cultural activity throughout the Province;
- (d) educating the public regarding the cultural, recreational, educational, social and economic importance of culture and the uniqueness of Nova Scotians’ diverse cultural identities;
- (e) investing in cultural development, the cultural industries and cultural activity;
- (f) researching matters relating to the creative economy and the culture sector; and
- (g) existing or new cultural policy. 2011, c. 34, s. 5.

### **Composition of Council and term of appointment**

**6 (1)** The Council consists of no more than 16 members and is composed of the following:

- (a) no more than 13 members appointed by the Minister upon recommendation of the nominating committee established pursuant to Section 7;
- (b) two members from staff within the Department of Communities, Culture, Tourism and Heritage appointed by the Minister upon recommendation from the Deputy Minister; and
- (c) one non-voting member appointed by Arts Nova Scotia — Arts Nouvelle-Écosse.

**(2)** Appointments made pursuant to subsection (1) are for a term not exceeding three years.

(3) Subject to subsection (4), a member may be reappointed except that no person may serve more than six consecutive years.

(4) Members who serve for six consecutive years are eligible for reappointment after a one-year absence from the Council.

(5) The Chair may appoint persons who are not members to serve on Council committees if approved by a two-thirds majority vote of the members. 2011, c. 34, s. 6; 2012, c. 8, s. 6.

#### **Nominating committee**

7 There shall be a nominating committee of the Council consisting of the Chair and at least three members of the Council. 2011, c. 34, s. 7.

#### **Communities to be represented**

8 (1) The membership of the Council must reflect the diversity found within the Province's culture community.

(2) When possible, the members should include representatives of differing art disciplines, generations and Nova Scotia's cultural mosaic, members from African Nova Scotia, Mi'kmaw and Acadian communities and equal representation between women and men. 2011, c. 34, s. 8.

#### **Executive Committee**

9 (1) The Council shall, by a two-thirds majority vote of the members, annually elect the Chair and Vice-chair and other officers as determined by the members.

(2) The terms of office begin and end with the Council's annual general meeting.

(3) The Chair, Vice-chair and at least one other appointed member and the two departmental appointees comprise the Executive Committee.

(4) The Executive Committee shall establish and manage the Council's agenda and perform other duties as assigned by the Council. 2011, c. 34, s. 9; 2012, c. 8, s. 7.

#### **Meetings**

10 The Council shall meet regularly at least four times a year on such dates and at such times and places as are determined by a two-thirds majority vote of the members. 2011, c. 34, s. 10.

#### **Attendance**

11 Where a member fails to attend three consecutive regular meetings of the Council without an excuse acceptable to the Chair and the Executive Committee members, the Chair may recommend to the Minister that the member's appointment be revoked and the Minister may revoke that member's appointment regardless of whether the Minister made the appointment. 2011, c. 34, s. 11; 2012, c. 8, s. 8.

**Quorum**

12 A majority of the members constitutes a quorum. 2011, c. 34, s. 12.

**Effect of vacancy**

13 A vacancy on the Council does not impede the right of the remaining members to act. 2011, c. 34, s. 13.

**Expenses**

14 A member or a person serving on a committee of the Council is entitled to be reimbursed for reasonable expenses necessarily incurred. 2011, c. 34, s. 14.

**Status of Council**

15 The Council is a department for the purpose of the definition of “department” in the *Conflict of Interest Act* and, for greater certainty, Section 22 of that Act applies to the members of the Council. 2011, c. 34, s. 15.

**Bylaws**

16 The Council may, with the approval of the Minister, make bylaws regulating its proceedings respecting the conduct and management of its activities and the establishment of such committees as it considers necessary to assist in carrying out its objects and duties. 2011, c. 34, s. 16.

**Fiscal year**

17 The fiscal year of the Council is the same as the fiscal year of the Province. 2011, c. 34, s. 17.

**Annual Report**

18 No later than June 30th of each year, the Chair shall submit to the Minister a report for the previous fiscal year. 2011, c. 34, s. 18.

**Regulations**

- 19 (1) The Governor in Council may make regulations
- (a) defining any word or expression used in this Act but not defined in this Act;
  - (b) respecting any matter or thing the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Act.

(2) Regulations made pursuant to subsection (1) may be of general or specific application.

(3) The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 2011, c. 34, s. 19.

CHAPTER C-73

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

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**Short title**

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

## PART I

## INTERPRETATION AND APPLICATION

**Purposes of credit unions generally**

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

**Interpretation**

3 In this Act,

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

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

“associate” means a person, other than a member, who has rights as set out in the charter bylaws or this Act, in a credit union or the Central;

“auditor” includes a partnership of auditors;

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

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

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

“Central” means the Atlantic Central continued by this Act;

“charter bylaw” means a bylaw of a credit union or the Central that requires the approval of the Superintendent;

“Corporation” means the Nova Scotia Credit Union Deposit Insurance Corporation established pursuant to Section 156;

“court” means the Supreme Court of Nova Scotia;

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

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

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

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

“delegate” means an individual elected, in accordance with the charter bylaws, to represent a group of members at meetings of a credit union or the Central;

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

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

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

“immediate family” means the spouse, child, sibling, parent or grandparent of an individual;

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

“individual” means a natural person;

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

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

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

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

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

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

“prescribed” means prescribed by the regulations;

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

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

“send” includes deliver;

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

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

“Superintendent” means the Superintendent appointed pursuant to Section 263. 1994, c. 4, s. 3; 2004, c. 11, s. 1; 2010, c. 49, s. 1.

#### **Application of Act**

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

- (a) every credit union incorporated pursuant to this Act;
- (b) every credit union incorporated pursuant to similar legislation of the Province in force before January 1, 1995;
- (c) the Central continued pursuant to this Act; and
- (d) the Corporation established pursuant to this Act.

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

## PART II

### INCORPORATION OF CREDIT UNIONS

#### **Application for incorporation**

**5** (1) Any 50 or more individuals, no one of whom

- (a) is less than 18 years of age; or
- (b) has the status of an undischarged bankrupt,

may apply for incorporation as a credit union by sending to

- (c) the Superintendent, in duplicate, articles of incorporation, a notice of registered office in the prescribed form and the proposed charter bylaws; and
- (d) the Corporation, a proposed business plan.

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

(3) The recommendation referred to in subsection (2) is not binding on the Superintendent. 2004, c. 11, s. 2; 2019, c. 13, s. 1.

#### **Articles of incorporation**

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

- (a) the name of the credit union;
- (b) the location in the Province where the registered office is to be situated;

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

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

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

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

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

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

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

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

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

(4) The charter bylaws must provide for such of the following matters as are applicable but are not set out in the articles:

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

(b) the location of meetings of members, the mode of holding meetings and the quorum at meetings, the rights of voting and making, repealing or amending bylaws, the right of members to vote by ballot or mail or electronically, or any two or all three, and the manner, form and effect of votes at meetings;

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

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

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

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

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

(h) all other matters that, by this Act, are required to be dealt with in the charter bylaws. 1994, c. 4, s. 6; 2019, c. 13, s. 2.

#### **Filing of articles and charter bylaws**

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

- (a) the Superintendent is satisfied that the incorporation provides a public benefit and
  - (i) the subscribers and proposed directors are residents of the Province and are qualified pursuant to this Act to establish and operate a credit union,
  - (ii) the proposed credit union will be organized and operated for the convenience and advantage of its members,
  - (iii) the proposed credit union will be organized and operated in a manner whereby the investments and deposits of members will be safeguarded without likelihood of claim upon the Corporation, and
  - (iv) the proposed bond of association, if any, is not objectionable;
- (b) the articles are in compliance with the provisions of this Act; and
- (c) the Superintendent approves the charter bylaws. 1994, c. 4, s. 7.

#### **Certificate of incorporation**

8 Upon acceptance for filing and approval of the articles and charter bylaws, the Superintendent shall issue a certificate of incorporation in accordance with Section 265. 1994, c. 4, s. 8.

#### **Effect of certificate**

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

#### **Name of credit union**

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

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

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

(4) No person other than a credit union shall use the words “credit union” or “caisse populaire” or any derivative or abbreviation thereof as part of its

name, or shall hold itself out as, or use part of its name or otherwise any word or abbreviation suggesting, indicating or implying that it is, or is carrying on business as, a credit union.

- (5) Subsection (4) does not apply to
- (a) a body corporate incorporated by or under the authority of an Act of the Parliament of Canada;
  - (b) a credit union incorporated pursuant to the laws of any other province and that is authorized pursuant to this Act to carry on business in the Province;
  - (c) the Central or the Corporation;
  - (d) a body corporate with the written authorization of the Superintendent. 1994, c. 4, s. 10; 2004, c. 11, s. 3.

#### **Reservation of name**

**11** The Superintendent may, upon the request in writing of any person and upon payment of the prescribed fee, reserve a name for the use and benefit of the persons desiring to form a credit union for a period of 90 days if the name is not contrary to Section 12. 1994, c. 4, s. 11.

#### **Prohibited name**

- 12 (1)** A credit union shall not have a name that
- (a) is known to the Superintendent to be identical with the name of an existing or a dissolved credit union except as prescribed;
  - (b) subject to subsection (2), is known to the Superintendent to be the same as the name of a business or association or other body corporate;
  - (c) suggests or implies a connection with the Crown or any member of the Royal Family, or the Government of Canada, of the government of any province in Canada or any department, branch, bureau, service, agency or activity of that government, without the consent in writing of the appropriate authority;
  - (d) includes the word "Trust"; or
  - (e) the Superintendent, for any good and valid reason disapproves.

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

**(3)** Where a credit union is granted a name subject to an undertaking given pursuant to subsection (2) and the undertaking is not carried out within the specified time, the Superintendent may direct the credit union to which the name is granted to change its name to a name that complies with this Act and, if the credit

union fails to comply with the directive within 60 days of the service thereof, the Superintendent may revoke the name of the credit union and assign to it a number and, until changed in accordance with Section 126, the name of the credit union is the number so assigned.

- (4) Where a credit union
- (a) comes into existence or is continued with a name; or
  - (b) upon an application to change its name, is granted a name,

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

(5) Where a credit union is directed pursuant to subsection (4) to change its name and fails within 60 days from the service of the directive to change its name to a name that complies with this Act, the Superintendent may revoke the name of the credit union and assign to it a number and, until changed in accordance with Section 126, the name of the credit union is the number so assigned.

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

#### **Personal liability on contract**

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

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

- (a) the credit union is bound by the contract and is entitled to the benefits thereof as if the credit union had been in existence at the date of the contract and had been a party thereto; and
- (b) the person who purported to act in the name of or on behalf of the credit union ceases, except as provided in subsection (3), to be bound by or entitled to the benefits of the contract.

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

(4) Where expressly so provided in the written contract, a person, who purported to act in the name of or on behalf of the credit union before it came

into existence, is not in any event bound by the contract or entitled to the benefits thereof. 1994, c. 4, s. 13.

### PART III

#### CAPACITY AND POWERS

##### Capacity of a credit union

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

##### Extra-territorial capacity

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

##### Capacity

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

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

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

**(3)** A credit union shall not carry on any business other than that appertaining to the business of credit unions and a credit union shall not

- (a) engage in the provision of real estate brokerage services;
- (b) except as authorized pursuant to the *Cemetery and Funeral Services Act*, execute the office of executor, administrator or guardian of a minor's estate or representative for an adult under the *Adult Capacity and Decision-making Act* or provide services of a fiduciary nature commonly provided by a trust company;
- (c) subject to subsection 39(1), act as a dealer, underwriter or adviser as defined in the *Securities Act*;
- (d) undertake the business of insurance, except to the extent permitted by this Act or the regulations; or
- (e) act as agent for any person in the placing of insurance and shall not lease or provide space in any branch of the credit union to any person engaged in the placing of insurance, except to the extent permitted by this Act or the regulations.

**(4)** Notwithstanding subsections (1) and (3), but subject to the regulations, a credit union may, in accordance with the regulations, enter into an

arrangement with a financial institution or any other body corporate of a prescribed type for the provision of any service or services offered by that financial institution or other body corporate. 1994, c. 4, s. 16; 2017, c. 4, s. 79.

### **Insurance**

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

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

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

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

### **Powers of a credit union**

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

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

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

### **Directives of Corporation**

**19** A credit union shall act in accordance with the directives of the Corporation. 2019, c. 13, s. 3.

### **No constructive notice**

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

### **Reliance of persons dealing with credit union**

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

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

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

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

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

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

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

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

#### PART IV

#### REGISTERED OFFICE, BRANCHES AND RECORDS

##### Registered office

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

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

**(3)** A credit union shall send to the Superintendent, within 15 days of any change, a notice in prescribed form of any change of address of its registered office.

**(4)** Where the location of the registered office of a credit union is changed by reason only of the annexation or amalgamation of the location in which the registered office is situate to or with another municipality, that change does not constitute and is not deemed to constitute a change within the meaning of subsection 126(1). 1994, c. 4, s. 22; 2019, c. 13, s. 5.

##### Branch offices

**23** A credit union may establish, relocate or close branch offices of the credit union as prescribed. 2019, c. 13, s. 5.

##### Records

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

(a) the articles and the bylaws and all amendments thereto;

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

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

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

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

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

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

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

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

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

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

#### **Examination of records**

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

(2) Where the affidavit referred to in subsection (5) is sent to the credit union, members of a credit union, their agents and legal representatives may examine the records referred to in clause 24(1)(d) during the usual business hours of the credit union and may, upon payment of a reasonable fee, receive from the credit union a copy of the members register.

(3) Where the affidavit referred to in subsection (5) is sent to the credit union, holders of shares of a class other than common or surplus shares, their agents and legal representatives may examine the records referred to in clause 24(1)(e) during the usual business hours of the credit union and may, upon payment of a reasonable fee, receive from the credit union a copy of the shareholders register.

(4) Notwithstanding subsections (1), (2) and (3), a credit union may not disclose a residential address or any other information protected by privacy legislation kept by the credit union under clauses 24(1)(c), (d) and (e).

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

(6) A person who uses a register for purposes not related to the affairs of the credit union is guilty of an offence and liable on summary conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding six months, or to both.

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

(8) The directors of a credit union or the duly authorized representative of the board of directors may examine the records referred to in clause 24(1)(f) at all reasonable times at no charge.

(9) The Superintendent has the right to inspect the records referred to in subsection 24(1) at all reasonable times. 1994, c. 4, s. 24; 2019, c. 13, s. 6.

#### **Form of records**

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

- (2) A credit union and its agents shall take reasonable precautions to
- (a) prevent loss or destruction of;
  - (b) prevent falsification of entries in;
  - (c) facilitate detection and correction of inaccuracies in,

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

**Corporate seal**

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

## PART V

## CAPITALIZATION AND OPERATING STANDARDS

**Common shares**

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

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

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

**Deemed common share**

**29** Where a credit union was incorporated prior to January 1, 1995, an issued share of the credit union is deemed, for the purpose of this Act, to be a common share. 1994, c. 4, s. 28.

**Shares other than common shares**

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

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

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

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

**No share certificates**

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

**Consideration for share**

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

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

**Patronage refund**

**33** After providing for all known liabilities, making allowance for impaired accounts and making such other provisions as are required by this Act and the regulations and after providing for payment of dividends, if any, on all classes of shares, the directors of a credit union may allocate, as a patronage refund among, and credit to, its members any surplus arising from the operations of the credit union in each fiscal year, and each member is entitled to a share thereof proportionate to the business done by that member with or through the credit union in that fiscal year as computed by the directors at a rate approved by the resolution of the directors. 1994, c. 4, s. 32; 2004, c. 11, s. 6; 2019, c. 13, s. 7.

**Use of patronage refund or dividend**

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

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

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

**Redemption or repayment**

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

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

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

(i) its liabilities, and

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

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

#### **Dividends on common or surplus shares**

36 Subject to subsection 37(1), a credit union may declare and pay such dividends upon its outstanding common or surplus shares as may be established by a resolution of the directors. 1994, c. 4, s. 35; 2004, c. 11, s. 7.

#### **Restriction**

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

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

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

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

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

#### **Limitation on holding of shares**

38 Unless the charter bylaws otherwise provide, no person may hold more than 10% of the total number of issued shares of any class comprising the capital of the credit union. 1994, c. 4, s. 37.

#### **Application of Securities Act**

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

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

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

#### **Application of Securities Transfer Act**

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

#### **Non-voting shares**

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

(2) The holders of shares of a class other than common or surplus shares are, unless the articles otherwise provide in the case of an amendment referred to in clauses (a), (b) and (e), entitled to vote separately as a class upon a proposal to amend the articles to

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

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

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

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

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

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

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

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

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

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

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

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

**Limit of liability**

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

**Remedy preserved**

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

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

**Unclaimed balances**

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

**Members right to withdraw deposits**

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

**(2)** A credit union may, in its sole discretion, require up to 90 days notice in writing of a member's intention to withdraw deposits or to redeem any shares.

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

**Trust funds**

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

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

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

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

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

### Loans

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

### Material deposits

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

### Lien on deposits and shares

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

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

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

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

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

### Restrictions on overdrafts

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

**Liquidity reserves and investments**

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

**(2)** All investments made by a credit union for the purpose of meeting liquidity reserve requirements must be made in financial instruments as prescribed.

**(3)** A credit union shall establish and adhere to liquidity policies for the credit union consistent with the regulations governing adequate liquidity. 1994, c. 4, s. 49; 2019, c. 13, s. 8.

**Investments generally**

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

**Allowance for impaired accounts**

**53** A credit union shall establish and maintain an allowance for impaired accounts as prescribed. 1994, c. 4, s. 51; 2019, c. 13, s. 9.

**Equity**

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

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

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

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

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

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

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

(c) the retained surplus or accumulated deficit of a credit union.

**(3)** A credit union shall establish and adhere to equity policies for the credit union consistent with the regulations governing equity. 1994, c. 4, s. 52; 2019, c. 13, s. 10.

**Matching**

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

**Insurance**

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

**Adjustments**

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

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

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

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

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

**PART VI****MEMBERSHIP****Members**

**58 (1)** The membership of a credit union consists of its incorporators and other members defined in accordance with this Act and the charter bylaws of the credit union.

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

**(3)** A person under 18 years of age may be accepted as a member of a credit union and shares may be held and money received by the credit union in that person's name or in the name of a trustee for that person, if the trustee is a member or is eligible to be a member of the credit union.

**(4)** A credit union may not be a member of another credit union. 1994, c. 4, s. 56; 2004, c. 11, s. 8; 2019, c. 13, s. 11.

**Common bond**

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

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

#### **Associates**

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

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

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

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

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

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

(a) vote at any meeting of members; or

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

#### **Termination, withdrawal and refusal of membership**

**61** Membership in a credit union may be terminated, withdrawn or refused in accordance with the charter bylaws of the credit union. 2019, c. 13, s. 12.

#### **Withdrawal**

**62** (1) A member may withdraw from a credit union on such terms and conditions as this Act, the articles or the charter bylaws of the credit union may provide.

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

#### **Remedy preserved**

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

#### **Power to enact bylaws**

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

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

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

(3) A charter bylaw, amendment or repeal is effective upon the approval of the Superintendent or, in the event that the charter bylaws have been approved pursuant to subsection (4), upon enactment of the charter bylaw by the credit union.

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

- (a) the charter bylaw must be adopted by the members of the credit union within 30 days of receipt of the approval of the Superintendent; and
- (b) a certified copy of the adopted charter bylaw must be filed with the Superintendent within 30 days of its adoption by the members of the credit union.

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

#### **Members bound by articles and bylaws**

**65** The articles and charter bylaws of a credit union bind the credit union and its members. 1994, c. 4, s. 63.

#### **Place of meetings**

**66** Meetings of the members of a credit union must be held at the place within the Province provided in the charter bylaws or, in the absence of that provision, at the place within the Province that the directors may determine. 1994, c. 4, s. 64.

#### **Calling meetings**

**67** The directors of a credit union

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

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

**Record date**

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

**Notice of meeting**

**69 (1)** Notice of the time and place of a meeting of members must be given in accordance with the provisions of the charter bylaws or, in the absence of those provisions, not less than 14 days nor more than 30 days before the meeting to each member entitled to vote at the meeting, and to the auditor of the credit union.

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

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

**(4)** All business transacted

(a) at a special meeting of members; or

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

is deemed to be special business.

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

**(6)** Copies of the information referred to in subsection (5) must be made available at the registered office of the credit union at least 10 days before the meeting referred to in subsection (5). 1994, c. 4, s. 67; 2004, c. 11, s. 11.

**Waiver of notice**

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

**Member proposal**

- 71** (1) A member entitled to vote at a meeting of members may
- (a) submit to the credit union notice of any matter that the member proposes to raise at the meeting, hereinafter referred to as a “proposal”;
  - (b) discuss at the meeting any matter in respect of which the member would have been entitled to submit a proposal.
- (2) A credit union shall give notice of the meeting at which a proposal is to be presented.
- (3) A member submitting a proposal shall provide a statement outlining the intent of the proposal in sufficient detail to permit members reviewing the proposal to form a reasonable judgement regarding the proposal.
- (4) Copies of a proposal referred to in subsection (1) and any supporting information must be made available at the registered office of the credit union at least 10 days before the meeting at which the proposal will be considered.
- (5) If so requested by a member submitting a proposal, the credit union shall include in the notice or attach thereto a statement by the member of not more than 200 words in support of the proposal, and the name and address of the member.
- to (5) if (6) A credit union is not required to comply with subsections (2)
- (a) the proposal is not submitted to the credit union at least 60 days before the first anniversary date of the previous annual meeting of the members;
  - (b) it clearly appears that the proposal is submitted by the member primarily for the purpose of enforcing a personal claim or redressing a personal grievance against the credit union or its directors, officers, members or other security holders, or primarily for the purpose of promoting general economic, political, racial, religious, social or similar causes;
  - (c) the credit union, at the member’s request, included a proposal in the notice of meeting of members held within two years preceding the receipt of the submission pursuant to subsection (1), and the member failed to present the proposal at that meeting;
  - (d) substantially the same proposal was submitted to the members in the notice of a meeting of members held within two years preceding the receipt of the member’s request, and the proposal was defeated; or
  - (e) the rights conferred by this Section are being abused to secure publicity.
- (7) No credit union or person acting on its behalf incurs any liability by reason only of circulating a proposal or statement in compliance with this Section.

(8) Where a credit union refuses to include a proposal in a notice of meeting, the credit union shall, within 10 days after receiving the proposal, notify the member submitting the proposal of its intention to omit the proposal from the notice and send to the member a statement of the reasons for the refusal.

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

(10) The credit union or any person claiming to be aggrieved by a proposal may apply to the court for an order permitting the credit union to omit the proposal from the notice of meeting, and the court, if it is satisfied that subsection (6) applies, may make the order.

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

### **Quorum**

72 (1) Unless the charter bylaws otherwise provide, a number of members equal to the number of directors plus five constitutes a quorum.

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

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

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

### **Voting eligibility**

73 (1) A member of a credit union, 18 years of age or over, may vote at a meeting of members.

(2) Subject to subsection (3) and the provisions of subsections 41(1) and (2), a member of a credit union has only one vote on any question that may be voted on at a meeting of the credit union.

(3) An individual authorized pursuant to subsection 74(1) may vote on behalf of a body corporate or association the individual is authorized to represent and, where the individual is a member, on the individual's own behalf as well. 1994, c. 4, s. 71; 2019, c. 13, s. 13.

### **Representatives of corporations**

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

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

#### **Proxy**

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

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

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

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

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

at a meeting of members of a credit union.

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

#### **Joint membership**

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

(2) The individuals making up a joint membership are entitled to one vote each where the joint membership meets the requirements of subsection 28(3) with respect to each of the individuals making up the joint membership. 1994, c. 4, s. 74.

#### **Mail or other forms of voting**

77 A credit union may, by charter bylaw, establish procedures to permit members to vote by mail ballot, electronically, in-branch ballot or by other means. 1994, c. 4, s. 75; 2019, c. 13, s. 14.

#### **Executors and administrators**

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

#### **Method of voting**

79 (1) Unless the charter bylaws otherwise provide, voting at a meeting of members is by show of hands, except where a ballot is demanded by at least three members entitled to vote at the meeting.

(2) The members referred to in subsection (1) may demand a ballot either before or after any vote by show of hands, and the result of the ballot is the decision of the members. 1994, c. 4, s. 77; 2019, c. 13, s. 15.

#### **Members calling meetings**

**80** (1) The lesser of five per cent of the membership at the end of the last fiscal year and 250 members, who have the right to vote at a meeting sought to be held or such other number of members as the bylaws may provide, may, by written requisition, require the directors to call a special meeting of members for the purpose stated in the requisition.

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

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

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

(5) Upon receiving the requisition referred to in subsection (1), the directors shall call a meeting of members to transact the business stated in the requisition, unless the business of the meeting as stated in the requisition includes a matter described in clauses 71(6)(b) to (e).

(6) Where the directors do not, within 30 days after receiving the requisition referred to in subsection (1), call a meeting, any member who signed the requisition may call the meeting.

(7) A meeting called pursuant to this Section must be called as nearly as possible in the manner in which meetings are to be called pursuant to this Act and the charter bylaws.

(8) Unless the members otherwise resolve at a meeting called pursuant to subsection (6), the credit union shall reimburse the members for the expenses reasonably incurred by them in requisitioning, calling and holding the meeting. 1994, c. 4, s. 78; 2004, c. 11, s. 13; 2019, c. 13, s. 16.

#### **Meeting called by Superintendent and quorum**

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

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

## PART VII

### DIRECTORS AND OFFICERS

#### Numbers and duties of directors

**82** (1) A credit union may, by charter bylaw, establish a fixed number or a minimum and maximum number of directors but in no event may the number of directors be fewer than five.

(2) The directors shall

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

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

#### Chair, vice-chair and secretary

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

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

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

#### Qualifications of directors

**84** (1) A citizen or permanent resident of Canada who is 18 years of age, a member of the credit union and satisfies the requirements set out in the charter bylaws of the credit union except

(a) an undischarged bankrupt;

(b) an employee of a member of the Central, the Central, the Corporation or a deposit insurer;

(c) an auditor, or a partner of the auditor's firm, of any member of the Central;

(d) a member who is in arrears for more than 90 days under a debt obligation to a member of the Central;

(e) the solicitor, or a partner of the solicitor's firm, of any member of the Central; or

(f) a civil servant whose official duties are concerned with the affairs of credit unions,

may be a director of the credit union.

- (2) A non-individual shall not be a director of a credit union.
- (3) Within a period specified by the Central,
  - (a) a person elected or appointed for the first time as a director of a credit union; or
  - (b) where required by the Central, every director of a credit union who has not completed a director training program,

shall complete a credit union director training program determined by the Central. 1994, c. 4, s. 82; 2004, c. 11, s. 14; 2010, c. 49, s. 2; 2019, c. 13, s. 17.

#### **Terms of office of directors and election**

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

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

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

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

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

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

(7) Notwithstanding anything in this Section, a director appointed as part of an amalgamation agreement may serve such term provided for in the amalgamation agreement. 1994, c. 4, s. 83; 2019, c. 13, s. 18.

#### **Ceasing to hold office**

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

- (a) dies or resigns;
- (b) is removed from office in accordance with the articles or charter bylaws or Section 87; or
- (c) becomes disqualified pursuant to Section 84.

(2) The resignation of a director becomes effective at the time a written resignation is received by the credit union, or at the time specified in the resignation, whichever is later. 1994, c. 4, s. 84; 2019, c. 13, s. 20.

**Removal of director**

**87 (1)** Unless the articles or charter bylaws otherwise provide, the members of a credit union may, by ordinary resolution, at a special meeting remove any director from office.

**(2)** A vacancy created by the removal of a director from office may be filled at the meeting of the members at which the director is removed, or if not so filled, may be filled pursuant to Section 89. 1994, c. 4, s. 85; 2019, c. 13, s. 20.

**Statement of director**

**88 (1)** A director who

- (a) resigns;
- (b) receives a notice or otherwise learns of an intended action to remove the director from office; or
- (c) receives a notice or otherwise learns of an intended action to appoint or elect another person to fill the office of director in that person's stead, whether because of that person's resignation or removal or because that person's term of office has expired or is about to expire,

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

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

**(3)** No credit union or person acting on its behalf incurs any liability by reason only of circulating a statement in compliance with subsection (2). 1994, c. 4, s. 86; 2019, c. 13, s. 21.

**Filling vacancy**

**89 (1)** Unless the articles or charter bylaws otherwise provide, subject to subsection (4), a quorum of directors may fill a vacancy among the directors, except a vacancy resulting from an increase in, or the members' failure to elect, the fixed or minimum number of directors.

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

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

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

(5) Where a vacancy among the directors is filled pursuant to subsection (1), the appointment must be ratified at the next meeting of members. 1994, c. 4, s. 87; 2019, c. 13, s. 22.

#### **Notice of change of directors**

90 (1) Within 15 days after a change of directors occurs, a credit union shall send to the Superintendent a notice in the prescribed form setting out the change, and the Superintendent shall file the notice.

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

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

#### **Meeting of directors**

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

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

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

- (a) any question or matter requiring the approval of the members;
- (b) the filling of a vacancy among the directors;
- (c) the issuance or redemption of any securities of the credit union other than common shares; or
- (d) the approval of any financial statements of a kind referred to in Section 107.

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

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

(6) Subject to the charter bylaws, a director may, where all the directors participating in the meeting consent, participate in a meeting of directors

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

#### **Delegation to committee**

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

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

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

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

- (a) submit to the members any question or matter requiring approval of the members;
- (b) fill a vacancy among the directors;
- (c) hire or establish the terms of employment of the general manager of the credit union;
- (d) issue or redeem shares, except in the manner and on the terms authorized by the directors; or
- (e) approve any financial statements referred to in Section 107. 1994, c. 4, s. 90; 2004, c. 11, s. 16.

#### **Audit committee and credit committee**

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

#### **Validity of act of directors and officers**

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

#### **Resolution in lieu of meeting**

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

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

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

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

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

#### **Liability of directors and others**

**96** (1) Directors of a credit union who vote for or consent to a resolution authorizing a payment contrary to Sections 35 and 37, or the payment of an indemnity contrary to Section 104, are jointly and severally liable to restore to the credit union any amount so distributed or paid and not otherwise recovered by the credit union.

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

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

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

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

#### **Duty of directors to report**

**97** Where a director of a credit union becomes aware that

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

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

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

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

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

**Interest in “material contract”**

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

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

(a) employs a person as a full-time employee;

(b) retains the service of a person otherwise than as an employee; or

(c) disposes of or acquires property whether by sale, purchase, lease or otherwise, for consideration that exceeds \$5,000 in value.

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

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

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

(c) a contract for indemnity or insurance pursuant to Section 104; or

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

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

(a) the spouse of the director or officer;

(b) the parent, child, grandparent, grandchild or sibling of the director or officer or of the spouse of the director or officer;

(c) the spouse of any person mentioned in clause (b).

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

(a) a creditor of that person for a debt that is in excess of \$5,000;

- (b) a guarantor of the debts of that person in an amount that is in excess of \$5,000;
- (c) the owner or beneficial owner of not less than 20% of the issued shares of any class of shares of that person;
- (d) a partner of that person; or
- (e) a director or officer of that person.

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

- (a) is a party to a material contract or proposed material contract with the credit union; or
- (b) has a material interest in a contract or proposed contract between a person and the credit union,

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

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

- (a) that the terms of any loan in which the director or officer has a material interest are no more favourable than those offered by the credit union in the ordinary course of business; and
- (b) for the purpose of subsection (1), that it is reasonable that the services or property be obtained or supplied and such services or property are normally provided to the public in the ordinary course of business by the director or officer.

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

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

**(10)** A contract or transaction in which a director or officer has a conflict of interest is neither void nor voidable by reason only of that conflict of interest or by reason only that a director with a conflict of interest is present at or is counted to determine the presence of a quorum of a meeting of directors or a committee of directors that authorized the contract or transaction, if the director or officer disclosed the conflict of interest in accordance with this Section, did not participate in the vote to authorize such contract or transaction and the contract or transaction was approved by the directors or the members and it was reasonable and fair to the credit union at the time it was approved.

**(11)** Where a director votes on a resolution in which the director has declared a conflict of interest, the contract or transaction that is the subject of

the resolution is valid only if it is approved by not less than two thirds of the votes cast by the members at a special meeting of the credit union.

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

(13) A director or officer of a credit union who, without reasonable cause, fails to disclose a conflict of interest in accordance with this Section is guilty of an offence and liable on summary conviction to a fine not exceeding \$5,000 and such director or officer, on conviction, ceases to hold office and is not eligible for election as a director or for appointment as an officer of a credit union for a period of five years after the date of the conviction. 1994, c. 4, s. 96.

#### **Report of breach by auditor**

**99** An auditor shall promptly report to the board of directors and the Superintendent any breach of Section 98 of which the auditor is aware and, if the board of directors does not act to rectify the breach within a reasonable period of time, the auditor shall promptly report the failure to rectify to the Superintendent. 1994, c. 4, s. 97.

#### **Officers**

**100** Subject to the articles and charter bylaws,

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

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

(ii) fill a vacancy among the directors,

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

(iv) approve a financial statement of a kind referred to in Section 107;

(b) the directors may elect or appoint committees and delegate powers, duties and responsibilities to them, except powers to do anything referred to in clause (a);

(c) a director may become an officer of the credit union and may become a member of a committee; and

(d) two or more offices of the credit union may be held by the same person. 1994, c. 4, s. 98.

#### **Remuneration**

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

**Duty of care of directors and officers**

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

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

(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

**(2)** Every director and officer of a credit union shall comply with this Act and the regulations, and the articles and charter bylaws of the credit union.

**(3)** No provision in a contract, the articles, the bylaws or a resolution relieves a director or officer from the duty to act in accordance with this Act and the regulations or relieves the director or officer from liability for a breach of this Act or the regulations.

**(4)** This Section is in addition to and not a derogation of any other enactment or rule of law relating to the duty or liability of directors or officers of a credit union. 1994, c. 4, s. 100.

**Dissent**

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

(a) requests that the director's dissent be or the dissent is entered in the minutes of the meeting;

(b) sends a written dissent to the secretary of the meeting before the meeting is adjourned; or

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

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

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

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

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

**(4)** A director who relies in good faith upon

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

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

is not liable pursuant to Section 96. 1994, c. 4, s. 101.

### **Indemnification**

**104 (1)** Except in the case of an action by or on behalf of the credit union or body corporate to procure a judgment in its favour, or by or on behalf of the Superintendent or the Corporation pursuant to Section 243, in which case the approval of the court must first be obtained, a credit union may indemnify a director or officer of the credit union or a person who acts or acted at the credit union's request as a director or officer of a body corporate of which the credit union is or was a member, shareholder or creditor, and that person's heirs and legal representatives, against all costs, charges and expenses, including any amount paid to settle an action or satisfy a judgment, reasonably incurred by that person in respect of any civil, criminal or administrative action or proceeding to which that person is made a party by reason of being or having been a director or officer of the credit union or body corporate, if the director or officer

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

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

**(2)** Notwithstanding anything contained in this Section, a person referred to in subsection (1) is entitled to indemnity from the credit union in respect of all costs, charges and expenses reasonably incurred in connection with the defence of any civil, criminal or administrative action or proceeding to which that person is made a party by reason of being or having been a director or officer of a credit union or body corporate if the person seeking indemnity

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

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

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

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

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

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

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

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

## PART VIII

### RETURNS AND FINANCIAL DISCLOSURE

#### Fiscal year

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

#### Returns

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

(a) the name of the credit union;

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

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

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

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

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

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

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

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

**Annual financial statements**

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

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

(b) the report of the auditor; and

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

**(2)** The financial statements required pursuant to subsection (1) must, except as otherwise required by this Act or the regulations or as otherwise specified by the Superintendent, be prepared in accordance with International Financial Reporting Standards, the primary source of which is the CPA Canada Handbook.

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

(a) the aggregate amount of remuneration paid to all directors;

(b) the aggregate amount paid to all directors as reimbursement for expenses incurred on credit union business;

(c) the details of any loans made to directors or officers and to any persons in whom directors or officers have a material interest, which do not conform to the credit union's ordinary lending practices for members who are not directors or officers; and

(d) such other information as may be required to be disclosed by the regulations. 1994, c. 4, s. 105; 2015, c. 30, s. 147; 2019, c. 13, s. 23.

**Copies of documents**

**108** A credit union shall, at least 10 days before each annual meeting of members of the credit union,

(a) send a copy of the documents referred to in Section 107 to the Superintendent and the Corporation; and

(b) make a copy of the documents referred to in Section 107 available to members at the registered office of the credit union. 2004, c. 11, s. 17.

**Condition precedent to issue**

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

(a) approved by the directors, and the approval is evidenced by the signatures of two or more of the directors on the statements; and

(b) accompanied by the report of the auditor of the credit union.  
1994, c. 4, s. 107.

**Request for documents**

**110** A credit union shall, at any time on the request of a member, make available to that member a copy of the documents referred to in Section 107. 1994, c. 4, s. 108.

**Auditor**

**111 (1)** For the purpose of this Section,

(a) independence is a question of fact;

(b) a person is deemed not to be independent of the credit union if that person or that person's business partner

(i) is a business partner, director, officer or employee of the credit union or of any director, officer or employee of the credit union, or

(ii) has loans or deposits with the credit union at the time an audit is performed and such loans and deposits do not conform to the ordinary lending and deposit practices of the credit union.

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

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

(4) An auditor who becomes disqualified pursuant to this Section shall, subject to subsection (6), resign forthwith after becoming aware of the disqualification.

(5) Notwithstanding subsection (6), any interested person may apply to the court for an order declaring an auditor to be disqualified pursuant to this Section and the office of auditor to be vacant.

(6) Any interested person may apply to the Superintendent for an order exempting an auditor from disqualification pursuant to this Section, and the Superintendent may, if satisfied that an exemption would not unfairly prejudice the members, make an exemption order on such terms as the Superintendent thinks fit, and may make the order with retroactive effect. 1994, c. 4, s. 109.

**Ceasing to hold office**

- 112 (1)** An auditor of a credit union ceases to hold office on
- (a) death or resignation; or
  - (b) removal from office pursuant to subsection 111(5) or 113(1).

**(2)** A resignation of an auditor becomes effective at the time a written resignation is sent to the credit union, or at the time specified in the resignation, whichever is later. 1994, c. 4, s. 110.

**Removal of auditor**

**113 (1)** The members of a credit union may, at a special meeting, remove from office and replace any auditor appointed by them.

**(2)** Notice of a meeting called for the purpose of removing an auditor from office must be given to the Corporation and the Corporation is entitled to be represented and be heard at such meeting. 1994, c. 4, s. 111.

**Filling vacancy**

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

**(2)** Where there is not a quorum of directors, the directors then in office shall, within 21 days after a vacancy in the office of auditor occurs, call a special meeting of members to fill the vacancy and, if they fail to call a meeting or if there are no directors, the meeting may be called by any member.

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

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

**Court appointed auditor**

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

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

**Right to attend meetings**

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

**Statement of auditor**

**117 (1)** An auditor who

- (a) resigns;
- (b) receives a notice or otherwise learns of a meeting of members called for the purpose of removing that auditor from office; or
- (c) receives a notice or otherwise learns of a meeting of directors or members at which another person is to be appointed to fill the office of auditor, whether because of the resignation or removal of the incumbent auditor or because the auditor's term of office has expired or is about to expire,

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

**(2)** The credit union shall forthwith send a copy of the statement referred to in subsection (1) to every member entitled to receive notice of a meeting referred to in Section 116, to the Corporation and to the Superintendent.

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

**(4)** Notwithstanding subsection (3), a person otherwise qualified may accept an appointment or consent to be appointed as auditor of a credit union if, within 15 days after making the request referred to in that subsection, no reply is received.

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

**Examination and report by auditor**

**118 (1)** The auditor of a credit union shall make such examinations as the auditor considers necessary to enable the auditor to report on the financial statements referred to in Section 107 and on any other financial statement required by this Act or the regulations or the articles or bylaws of the credit union to be placed before the members of a credit union.

**(2)** The auditor's examination referred to in subsection (1) must, except as otherwise required by this Act or the regulations or as otherwise specified by the Superintendent, be conducted in accordance with International Financial Reporting Standards, the primary source of which is the CPA Canada Handbook. 1994, c. 4, s. 116; 2015, c. 30, s. 148; 2019, c. 13, s. 24.

**Scope of audit and payment of costs**

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

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

**Right to information**

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

- (a) such information and explanations; and
- (b) such access to records, documents, books, accounts and vouchers of the credit union,

as are, in the opinion of the auditor, necessary to enable the auditor to make the examination and report required pursuant to Section 107 and as the directors, officers, committee members, employees or agents are reasonably able to furnish.

(2) Upon the demand of the auditor of a credit union, the directors of the credit union shall obtain from the present or former directors, officers, employees and agents of any subsidiary of the credit union and furnish to the auditor any information or explanations that the present or former directors, officers, employees and agents of the subsidiary are reasonably able to furnish and that, in the opinion of the auditor, is necessary to enable the auditor to make the examination or report required pursuant to Section 107.

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

**Duty of auditor**

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

- (a) on the financial statements referred to in Section 107, to the members of the credit union not fewer than 15 days before the date of the annual meeting of the members; and
- (b) on such other financial statements as may be required by this Act or the regulations or the articles or bylaws of the credit union to be placed before the members on or before the date that the statement is distributed.

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

**Duty of auditor to manager and directors**

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

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

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

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

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

#### **Working papers made available**

**123** On the request of the Superintendent or the Corporation, an auditor of a credit union shall make available to the Superintendent or the Corporation the working papers of the auditor used in conducting an audit or preparing a report pursuant to this Act. 1994, c. 4, s. 122; 2019, c. 13, s. 25.

#### **Qualified privilege**

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

#### **No civil liability**

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

(2) Subsection (1) does not relieve an auditor or former auditor from liability in connection with a report referred to in clause 107(1)(b) or subsection 121(1). 1994, c. 4, s. 124.

## PART IX

### FUNDAMENTAL CHANGES

#### **Amendment of articles**

**126 (1)** Subject to the approval of the Superintendent pursuant to Section 128, the articles of a credit union may be amended by special resolution of the members.

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

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

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

#### **Articles sent to Superintendent**

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

#### **Certificate of amendment**

128 Upon receiving articles of amendment, the Superintendent may, if satisfied that the amendment is advisable and subject to Section 139, file the articles and issue a certificate of amendment in accordance with Section 265. 1994, c. 4, s. 127.

#### **Effect of certificate and existing rights**

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

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

#### **Restated articles and certificate**

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

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

(3) Upon receipt of restated articles of incorporation, the Superintendent shall issue a restated certificate of incorporation in accordance with Section 265.

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

#### **Amalgamation**

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

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

#### **Amalgamation agreement**

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

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

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

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

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

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

(f) the proposed charter bylaws of the amalgamated credit union; and

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

#### **Approval of amalgamation agreement**

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

(2) A notice of a meeting of members must be sent in accordance with Section 69 to each member of each amalgamating credit union and must

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

(b) state that a member is entitled to dissent in accordance with Section 139.

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

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

**Articles of amalgamation**

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

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

- (a) there are reasonable grounds for believing that
  - (i) each amalgamating credit union is, and the amalgamated credit union will be, able to pay its liabilities as they become due, and
  - (ii) the realizable value of the assets of the amalgamated credit union upon completion of the amalgamation will not be less than the aggregate of its liabilities and capital account of all shares of the credit union other than common shares; and
- (b) there are reasonable grounds for believing that
  - (i) no creditors and shareholders of the amalgamating credit unions who are not members thereof, will be prejudiced by the amalgamation, or
  - (ii) adequate notice has been given to all known creditors of the amalgamating credit unions and no creditor objects to the amalgamation otherwise than on grounds that are frivolous or vexatious.

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

- (4)** For the purpose of subsection (2), adequate notice is given if
- (a) a notice in writing is sent to each known creditor having a claim against the credit union that exceeds \$1,000;
  - (b) a notice is published in the Royal Gazette and once in a newspaper published or distributed in a place where each amalgamating credit union has its registered office; and
  - (c) each notice states that the credit union proposes to amalgamate with one or more specified other credit unions in accordance with this Act unless a creditor of the credit union objects to the amalgamation within 30 days from the date of the notice. 1994, c. 4, s. 133.

**Compulsory amalgamation**

**135** Where a credit union that is under supervision is ordered by its supervisor to amalgamate pursuant to Section 250, the provisions of Section 133 and subsection 134(2) do not apply to the credit union that is ordered to amalgamate. 1994, c. 4, s. 134.

**Certificate of amalgamation**

**136 (1)** Upon receiving articles of amalgamation, the Superintendent may, if satisfied that the amalgamation is advisable and subject to Section 139, file the articles and issue a certificate of amalgamation in accordance with Section 265.

- (2)** On the date shown in the certificate of amalgamation
- (a) the amalgamation of the amalgamating credit unions and their continuance as one credit union becomes effective;
  - (b) the property of each amalgamating credit union continues to be the property of the amalgamated credit union;
  - (c) the amalgamated credit union continues to be liable for the obligations of each amalgamating credit union;
  - (d) an existing cause of action, claim or liability to prosecute remains unaffected;
  - (e) a civil, criminal or administrative action or proceeding pending by or against any of the amalgamating credit unions may be continued by or against the amalgamated credit union;
  - (f) a conviction against or a ruling, order or judgment in favour of or against any of the amalgamating credit unions may be enforced by or against the amalgamated credit union;
  - (g) the articles of amalgamation are deemed to be the articles of incorporation of the amalgamated credit union and the certificate of amalgamation is deemed to be the certificate of incorporation of the amalgamated credit union;
  - (h) on the filing of a copy of the certificate of amalgamation, certified as a true copy by the Superintendent, in any land titles, registry or other recording office, all the lands, charges on land, estates, properties, real, personal or mixed, charges on personal property, effects, rights, credits, judgments, assignments and choses in action of every description belonging to the amalgamating credit unions are transferred and vested in the amalgamated credit union without further act, conveyance or other deed; and
  - (i) the members and associates of the amalgamating credit unions become members and associates of the amalgamated credit union and the shares held in the amalgamating credit unions become shares in the amalgamated credit union subject to the terms of the amalgamation agreement. 1994, c. 4, s. 135.

**Extraordinary sale, lease or exchange**

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

**(2)** A notice of a meeting of members called pursuant to subsection (1) must be sent in accordance with Section 69 to each member and must

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

(b) state that a member is entitled to dissent in accordance with Section 139.

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

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

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

#### **Approval of Superintendent**

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

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

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

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

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

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

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

(b) each notice states that the credit union proposes to sell, lease or exchange all, or substantially all, of its property, as the case may be, pursuant to Section 137, unless a creditor of the credit union objects to the sale, lease or exchange within 30 days from the date of the notice.

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

**Right to dissent**

**139 (1)** Subject to Sections 140 and 224, a member of a credit union may dissent if the credit union resolves to

- (a) change its name;
- (b) amalgamate with another credit union pursuant to Section 133;
- (c) sell, lease or exchange all or substantially all its property pursuant to Section 137; or
- (d) add, change or remove any provision that is set out in the articles.

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

**(3)** The credit union shall, within 10 days after the members adopt the resolution,

- (a) send to each member who has filed an objection pursuant to subsection (2), a notice that the resolution has been adopted, but notice is not required to be sent to any member who withdraws an objection; and
- (b) send to the Superintendent a copy of the resolution and copies of any written objections received by the credit union pursuant to subsection (2).

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

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

**Reorganization of credit union**

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

- (a) Section 224; or
- (b) the *Bankruptcy and Insolvency Act* (Canada) approving a proposal; or
- (c) any other Act of the Legislature that affects the rights of the credit union, its members or creditors.

(2) Where a credit union is subject to a reorganization, its articles may be amended by the order to effect any change that might lawfully have been made by an amendment pursuant to Section 126.

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

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

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

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

(5) Upon the receipt of articles of reorganization, the Superintendent shall file the articles and issue a certificate of amendment in accordance with Section 265.

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

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

#### **Extra-provincial credit unions**

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

#### **Extra-provincial registration**

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

## PART X

### DISSOLUTION, LIQUIDATION AND REVIVAL

#### **Dissolution of credit unions**

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

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

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

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

(b) the credit union has, pursuant to Section 137, sold its property and distributed any residual property and discharged all of its liabilities.

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

(5) A credit union that is being dissolved pursuant to this Section shall prepare articles of dissolution in accordance with Section 145. 1994, c. 4, s. 142.

#### **Proposing liquidation and dissolution**

**144** (1) The directors, or a member pursuant to Section 71, may make a proposal for the voluntary liquidation and dissolution of a credit union.

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

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

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

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

(6) Upon receipt of a statement of intent to dissolve, the Superintendent, if satisfied that prior to dissolution the credit union will be able to discharge all of its obligations and liabilities, shall issue a certificate of intent to dissolve in accordance with Section 265.

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

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

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

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

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

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

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

(10) Upon receipt of a statement of revocation of intent to dissolve, the Superintendent shall issue a certificate of revocation of intent to dissolve in accordance with Section 265.

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

(12) Where a certificate of intent to dissolve has not been revoked and the credit union has complied with subsection (8), the credit union shall send articles of dissolution in accordance with Section 145. 1994, c. 4, s. 143.

#### **Articles of dissolution and certificate**

**145 (1)** Articles of dissolution in prescribed form must be sent to the Superintendent.

(2) Upon receipt of articles of dissolution, the Superintendent shall issue a certificate of dissolution in prescribed form and in accordance with Section 265.

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

#### **Dissolution by Superintendent**

**146 (1)** Subject to subsections (2) and (3), where

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

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

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

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

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

(a) the credit union has been given 90 days notice of the Superintendent's decision to dissolve the credit union; and

(b) a notice has been published in the Royal Gazette of the decision to dissolve the credit union not less than 30 days prior to the date the Superintendent may dissolve the credit union.

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

(4) Unless the credit union remedies the default or cause to the contrary is shown or an order is made by a court pursuant to Section 230, the credit union is deemed to be dissolved on the date specified in the notice pursuant to clause (2)(b) and the Superintendent shall issue a certificate of dissolution pursuant to Section 145. 1994, c. 4, s. 145.

#### **Application to court to liquidate**

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

(a) the court is satisfied that

(i) any act or omission of the credit union effects a result,

(ii) the business or affairs of the credit union are or have been carried on or conducted in a manner, or

(iii) the powers of the directors of the credit union have been exercised in a manner,

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

(b) the court is satisfied that the credit union is

(i) not fulfilling the purposes of a credit union generally pursuant to Section 2,

(ii) not carrying on business in accordance with the restrictions contained in its articles, or

(iii) not organized or operated in accordance with this Act and the regulations; or

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

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

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

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

- (a) publish notice of the order in the Royal Gazette; and
- (b) issue a certificate of dissolution pursuant to Section 265 after

- (i) all obligations of the credit union are discharged and all its property distributed or disposed of, and
- (ii) the supervisor has rendered a final report to the court. 1994, c. 4, s. 146.

#### **Custody of records**

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

#### **Continuation of actions after dissolution**

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

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

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

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

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

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

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

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

#### **Unknown claimants**

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

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

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

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

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

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

#### **Revival by Superintendent or court**

**151 (1)** Where a credit union is dissolved pursuant to Section 143, 144 or 146, an interested person may apply to the Superintendent to have the credit union revived by filing articles of revival in prescribed form.

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

#### **Certificate of revival and preservation of rights**

**152 (1)** Upon the receipt of articles of revival in prescribed form, or an order of the court to revive the credit union, the Superintendent shall issue a certificate of revival in prescribed form and in accordance with Section 265.

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

**Return of property on revival**

**153** Where a credit union is revived pursuant to Section 152, any property other than money that vested in the Corporation pursuant to Section 150 and that has not been disposed of must be returned to the credit union and there must be paid to the credit union by the Corporation

(a) an amount equal to any money received by the Corporation pursuant to Section 150; and

(b) where property other than money vested in the Corporation pursuant to Section 150 and that property has been disposed of, an amount equal to the lesser of

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

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

**Non-application of Part**

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

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

PART XI

NOVA SCOTIA CREDIT UNION  
DEPOSIT INSURANCE CORPORATION

**Application of Part**

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

**Stabilization Fund continued**

**156 (1)** The Nova Scotia Credit Union Stabilization Fund is continued as the Nova Scotia Credit Union Deposit Insurance Corporation, subject to the provisions of this Act, and the members of the board and the officers of the Nova Scotia Credit Union Stabilization Fund on January 1, 1995, continue in office until their successors are appointed or elected.

- (2) In addition to the provisions of Section 270,
- (a) the Corporation continues to be
    - (i) the owner of its property, and
    - (ii) liable for its obligations;
  - (b) an existing cause of action, claim or liability to prosecution involving the Nova Scotia Credit Union Stabilization Fund is unaffected;
  - (c) a civil, criminal, or administrative action or proceeding pending by or against the Nova Scotia Credit Union Stabilization Fund may be continued to be prosecuted by or against the Corporation; and
  - (d) a conviction against, or ruling, order or judgment in favour of or against the Nova Scotia Credit Union Stabilization Fund may be enforced by or against the Corporation. 1994, c. 4, s. 155.

### Purposes of Corporation

157 The purposes of the Corporation are

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

### Powers

158 The Corporation may

- (a) determine the amounts of money to be levied and collected from credit unions for the purpose of Section 174;
- (b) borrow money on the credit of the Corporation or on bills of exchange or promissory notes drawn, made, accepted or endorsed by or on behalf of the Corporation and pledge as security any or all of the assets of the Corporation;
- (c) enter into any agreement or arrangement with any person relating to
  - (i) the prevention of insolvency of credit unions,

- (ii) financial assistance that it considers necessary to meet the requirements of its operations,
- (iii) other matters as it considers appropriate for the attainment of its purposes;
- (d) apply to the Minister for loans or guarantees of loans to assist it in carrying out its purpose;
- (e) make or cause to be made such examinations and inquiries in relation to credit unions and such actuarial or similar studies as the Corporation considers appropriate;
- (f) guarantee loans made by third parties to credit unions and take security for such guarantees;
- (g) make investments in relation to the deposit insurance fund or cause such investments to be made;
- (h) assume or purchase the liabilities or assets of credit unions on their liquidation or dissolution;
- (i) establish terms, conditions, restrictions and limitations in relation to the lending activities of credit unions and the loan policies to be established by credit unions;
- (j) in consultation with the Superintendent and the Central, issue directives in relation to sound business and financial policies and procedures to be followed by credit unions, including directives in relation to those matters referred to in clause (i);
- (k) make available to credit unions any form of financial assistance for the purpose of stabilization that it considers appropriate on such terms and conditions as it considers appropriate;
- (l) assume the costs of the supervision and winding up of credit unions in accordance with Part XIV;
- (m) enter into an agreement with the Central whereby the Central is authorized to carry out such duties and activities on behalf of the Corporation as may be specified in the agreement;
- (n) engage any employees, enter into any agreements or arrangements and incur any costs and expenses that are required to carry out the purposes of the Corporation;
- (o) arrange or determine compulsory insurance programs for credit unions or insurance coverage on behalf of those credit unions;
- (p) require credit unions to make reports and specify the contents, frequency and form of such reports;
- (q) make arrangements with other jurisdictions to provide services or share and exchange resources as may be mutually agreed;
- (r) establish and maintain an intervention system;
- (s) issue or withdraw directives with respect to an intervention system;
- (t) do such other things as may be necessary or incidental to the attainment of its purposes. 1994, c. 4, s. 157; 2004, c. 11, s. 20; 2019, c. 13, s. 26.

**Directives of the Superintendent**

**159** The Corporation shall act in accordance with the directives of the Superintendent. 2019, c. 13, s. 27.

**Board**

**160 (1)** The affairs of the Corporation are administered by a board of seven members are appointed by the Governor in Council.

**(2)** The Central may make recommendations respecting the appointment of board members pursuant to subsection (1). 1994, c. 4, s. 158; 2023, c. 2, s. 7.

**Chair**

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

**Qualification of board members and resignation**

**162 (1)** Any citizen or permanent resident of Canada and resident of the Province who is 18 years of age except

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

may be a board member of the Corporation.

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

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

**(4)** Notwithstanding anything contained in this Section, a person referred to in clause (1)(b) or (d) may not be a board member of the Corporation unless at least two years has passed since the person ceased to be an employee of a member of the Central, the Central, the Corporation or a deposit insurer, as the case may be. 1994, c. 4, s. 160; 2004, c. 11, s. 21; 2007, c. 36, s. 1; 2010, c. 49, s. 3; 2019, c. 13, s. 28.

**Term of office**

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

**Vacancy**

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

**Ceasing to hold office**

**165** A member of the board of the Corporation ceases to hold office upon

- (a) death or resignation;
- (b) becoming disqualified from holding the office pursuant to Section 162; or
- (c) being removed from office by the Governor in Council. 1994, c. 4, s. 163.

**Duties of board**

**166** The board shall

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

**Quorum**

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

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

**Bylaws**

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

(2) The Corporation may make bylaws

- (a) respecting the administration, management and control of the property and affairs of the Corporation;
- (b) respecting the functions, duties and remuneration of the officers, agents and employees of the Corporation, if any;

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

#### **Bylaws filed with Superintendent**

**169** Within six months after the board of directors is appointed or elected in accordance with this Act, the Corporation shall file bylaws in accordance with Section 168 with the Superintendent. 1994, c. 4, s. 167.

#### **Insured deposits**

**170 (1)** Subject to the bylaws of the Corporation, the Corporation shall insure deposits placed with a credit union to an amount determined in accordance with the regulations.

**(2)** Where the Corporation is obliged to make payment in accordance with clause 173(a) in relation to any deposit insured by it, the Corporation as soon as possible after the obligation arises shall, in relation to such deposit, make payment, or cause such payment to be made to such person as appears entitled to it by the records of the credit union with whom the deposit was made by paying, or causing to be paid, to such person an amount in money equal to so much of the person’s outstanding claim against the credit union as is insured by the Corporation.

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

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

#### **Superintendent entitled to financial statements**

**171** The Superintendent is deemed to have an interest in the deposit insurance fund as representative of all persons who may be claimants against credit

unions, and the directors of the Corporation shall furnish the Superintendent with such financial statements and other information in relation to the fund and the Corporation as the Superintendent may require. 1994, c. 4, s. 169.

#### **Permitted advertising and offence**

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

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

#### **Deposit insurance fund**

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

- (a) to pay out claims of depositors in accordance with Section 170 on the liquidation of a credit union;
- (b) to provide financial assistance to credit unions for the purpose of stabilization; and
- (c) to pay any costs or expenses incurred in doing such other things as may be necessary for or incidental to the attainment of the purposes of the Corporation. 1994, c. 4, s. 171.

#### **Levy on credit unions**

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

#### **Collection of levy by Corporation**

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

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

#### **Loans or advances to Corporation**

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

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

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

**Records**

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

**Fiscal year**

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

**Audit**

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

**Procedure**

180 Sections 94, 95, 97 to 104, 107, 109, 111, 112, 114, 115 and 120 to 124 apply, with necessary changes, to the Corporation. 2004, c. 11, s. 25.

**Levies**

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

**Annual report**

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

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

**PART XII****THE CREDIT UNION CENTRAL OF NOVA SCOTIA****Interpretation of Part**

183 In this Part, "special resolution" means a resolution

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

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

**Application of Part**

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

**Credit Union Central continued**

**185 (1)** The Credit Union Central of Nova Scotia established before January 1, 1995, is continued as a body corporate subject to the provisions of this Act.

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

**(3)** For greater certainty, the directors and officers of the Central referred to in subsection (1) who held office immediately before January 1, 2011, continue in office until their successors are appointed or elected in accordance with this Act.

**(4)** On and after January 1, 1995,

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

**Amendment of articles**

**186 (1)** Subject to the approval of the Superintendent pursuant to Section 188, the articles of the Central may be amended by special resolution of the members.

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

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

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

**Articles sent to Superintendent**

**187** Subject to a revocation pursuant to subsection 186(4), after an amendment is adopted pursuant to subsection 186(1), articles of amendment in prescribed form must be sent to the Superintendent. 2010, c. 49, s. 7.

**Certificate of amendment**

**188** Upon receiving articles of amendment, the Superintendent may file the articles and issue a certificate of amendment in accordance with Section 265. 2010, c. 49, s. 7.

**Effect of certificate and existing rights**

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

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

**Restated articles and certificate**

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

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

**(3)** Upon receipt of restated articles of incorporation, the Superintendent shall issue a restated certificate of incorporation in accordance with Section 265.

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

**Section 140 applies**

**191** Section 140 applies with necessary changes in relation to the articles of the Central. 2010, c. 49, s. 7.

**Purposes of Central**

**192** The purposes of the Central are to

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

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

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

- (d) develop and promote sound business and financial policies and procedures, including those relating to lending activities, for the benefit of its members and to assist those members in the implementation of such policies and procedures;
- (e) promote the organization, development and welfare of its members;
- (f) encourage co-operation among co-operatives and its members; and
- (g) do such other things as may be required or authorized by this Act or the regulations. 1994, c. 4, s. 185; 2010, c. 49, s. 8.

### Capacity of Central

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

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

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

### Powers of Central

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

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

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

### Powers

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

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

(d) subject to subsection 193(2), accept and exercise all rights, powers, privileges and immunities conferred on it by the *Cooperative Credit Associations Act* (Canada) or successor legislation. 1994, c. 4, s. 188; 2010, c. 49, s. 10.

**Duties**

**196 (1)** The Central

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

(b) may make any other investments only in accordance with the regulations.

**(2)** The Central shall act in accordance with the directives of the Superintendent. 1994, c. 4, s. 189; 2010, c. 49, s. 11; 2019, c. 13, s. 29.

**Information to be provided**

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

**Levy for dues**

**198** Subject to such terms and conditions as may be specified in the bylaws, the Central may levy and collect from its members such amount of money in the form of dues as may be required by the Central to enable it to carry out its purposes pursuant to this Act and the regulations. 1994, c. 4, s. 191; 2010, c. 49, s. 13.

**Registered office and records**

**199** Part IV applies, with necessary changes, to the Central. 1994, c. 4, s. 192.

**Common shares**

**200 (1)** The Central is authorized to issue to its members an unlimited number of common shares and such other numbers and classes of shares that have the terms and conditions set out in the charter bylaws.

**(2)** Members and associate members of the Central shall purchase and hold such number of shares in the Central as may be required by charter bylaw. 1994, c. 4, s. 193; 2010, c. 49, s. 14.

**Shares other than common shares**

**201** In addition to common shares, the articles of the Central may provide for the issuance to its members and associate members of more than one class of shares, and if the articles so provide, there must be set out therein the maximum number of shares in each class, other than common shares, that the Central is entitled to issue, the total consideration to be paid for each such class of shares, and the rights, privileges, restrictions, conditions, including dividends, attached to the shares of each such class. 1994, c. 4, s. 194.

**Patronage refunds**

**202** Section 33 applies, with necessary changes, to the payment of patronage refunds by the Central. 1994, c. 4, s. 195.

**Use of patronage refund**

**203** The Central may, in its charter bylaws, provide that in each fiscal year of the Central the whole of any patronage refund credited to a member or associate member or such part thereof as may be prescribed in the charter bylaws must be applied to purchase on behalf of the member or associate member additional shares of the Central, up to such number, if any, as may be specified in the charter bylaws. 1994, c. 4, s. 196.

**Dividends and redemption of shares**

**204** The Central shall not pay a dividend on, or redeem, shares if there are reasonable grounds for believing that

- (a) the Central is, or would thereby be, unable to pay its liabilities as they become due; or
- (b) the realizable value of the Central's assets is, or would thereby be, less than the aggregate of
  - (i) its liabilities, and
  - (ii) the amount that would, at that time, be required to pay the holders of shares that have a right to be paid, on a redemption or in a liquidation, rateably with or prior to the holders of the shares to be purchased or redeemed. 1994, c. 4, s. 197.

**Securities**

**205** Section 39 applies, with necessary changes, to the issuance of securities by the Central. 1994, c. 4, s. 198.

**Voting rights**

**206** Section 41 applies, with necessary changes, to all shares issued by the Central. 1994, c. 4, s. 199.

**Financial matters**

**207** Sections 43 and 49, subsection 51(2) and Sections 52 and 54 apply, with necessary changes, to the Central. 1994, c. 4, s. 200.

**Membership in Central**

- 208** (1) Every credit union is a member of the Central.
- (2) The Central may have as members
- (a) credit unions incorporated or otherwise existing in the provinces of New Brunswick, Prince Edward Island and Newfoundland and Labrador to the extent that the laws of those provinces permit; and

(b) subject to the approval of the Superintendent, credit unions operating in any other jurisdiction to the extent that the laws of that jurisdiction permit. 1994, c. 4, s. 201; 2010, c. 49, s. 15.

#### **Associate members**

**209 (1)** The Central may, in its charter bylaws, permit persons who are not credit unions to become associate members of the Central upon such terms and conditions as are set out in its charter bylaws.

**(2)** An associate member of the Central has only those rights and privileges that are specifically granted to associate members in the charter bylaws of the Central. 1994, c. 4, s. 202.

#### **Establishment of delegate system**

**210 (1)** The powers of the members of the Central are vested in delegates to be elected or appointed by the members of the Central in such a manner as is prescribed in the charter bylaws of the Central.

**(2)** Delegates elected or appointed pursuant to the charter bylaws of the Central shall exercise fully and completely the powers, or any of them, of the members of the Central and, as such, a meeting of the delegates of the Central has the same effect in every way as a meeting of the members of the Central.

**(3)** A delegate may only vote in the manner provided for in the charter bylaws of the Central on any question that may be voted on at a meeting of the Central.

**(4)** A delegate may vote by proxy at a meeting of the Central as provided for in the charter bylaws of the Central. 1994, c. 4, s. 203; 2004, c. 11, s. 26; 2010, c. 49, s. 16.

#### **Limit of liability**

**211** Subject to this Act, a member or associate member is not responsible for any act, default or liability whatsoever of the Central or for any engagement, claim, payment, loss, injury, transaction, matter or thing whatsoever relating to or connected with the Central. 1994, c. 4, s. 204.

#### **Amendment of charter bylaws**

**212 (1)** Subject to this Act and the articles of the Central, the members of the Central may, at any annual meeting or general meeting called for the purpose, enact, amend or repeal charter bylaws in respect of those matters authorized or required by this Act.

**(2)** A bylaw may be enacted, amended or repealed by the members of the Central if

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

(b) written notice of the proposed enactment, amendment or repeal is forwarded to each member of the Central with the notice of the meeting at which the enactment, amendment or repeal is to be

considered and the proposed enactment, amendment or repeal is approved by a majority of the votes cast at the meeting.

(3) A charter bylaw, amendment or repeal is effective upon the approval of the Superintendent or, in the event that the charter bylaws have been approved pursuant to subsection (4), upon enactment of the charter bylaw by the Central.

(4) At the option of the Central, a charter bylaw and an amendment or repeal of a charter bylaw may be submitted to the Superintendent for approval before its adoption by the members of the Central, in which case

(a) the charter bylaw must be adopted by the members of the Central within 30 days of receipt of the approval of the Superintendent; and

(b) a certified copy of the adopted charter bylaw must be filed with the Superintendent within 30 days of its adoption by the members of the Central.

(5) Where the Central fails to comply with the requirements of subsection (4), the charter bylaw, amendment or repeal is void. 2010, c. 49, s. 17.

#### **Superintendent's approval**

**213** The Superintendent shall approve any charter bylaw enacted by the Central if the Superintendent is satisfied that the charter bylaw conforms with this Act and is consistent with the purposes of the Central. 1994, c. 4, s. 206.

#### **Charter bylaws**

**214** The charter bylaws of the Central must provide for any matter required by this Act to be included and must provide for such other matters that are applicable, including

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

(b) the location of meetings of delegates, the mode of holding meetings and the quorum at meetings;

(c) the procedure by which members or delegates call a special meeting of delegates;

(d) the enactment, amendment or repeal of charter bylaws at any annual meeting or general meeting called for that purpose;

(e) the right of delegates to vote by ballot or mail, or both, and the manner, form and effect of votes at meetings;

(f) the right of delegates to vote by proxy;

(g) the establishment of a credit committee and an audit committee;

(h) the election, term of office, removal of and filling of vacancies among directors, committee members and officers, their powers, duties and remunerations;

(i) the procedure and quorum at meetings of board of directors;

- (j) the establishment, maintenance and relocation of a registered office and branch offices for the Central wherever considered necessary or appropriate;
- (k) the establishment of the fiscal year end of the Central;
- (l) the incorporation and ownership of subsidiary companies by the Central;
- (m) the investment and use of the assets of the Central;
- (n) the loan of any money to its members or associate members;
- (o) the borrowing or raising or securing the payment of money;
- (p) the charging, hypothecation, mortgaging or pledging the real and personal property of the Central;
- (q) the issuing of debt obligations by the Central; and
- (r) all other matters that, by this Act, are required to be dealt with in the charter bylaws of the Central. 1994, c. 4, s. 207; 2004, c. 11, s. 27.

#### **Charter bylaws binding**

**215** The charter bylaws of the Central bind the Central and its members. 1994, c. 4, s. 208.

#### **Directors**

**216 (1)** The Central shall, by charter bylaw, establish a fixed number, or a minimum and maximum number, of directors for the Central.

- (2) The directors of the Central shall
  - (a) exercise the powers of the Central directly, or indirectly through the employees and the agents of the Central; and
  - (b) direct the management of the business and affairs of the Central. 1994, c. 4, s. 209.

#### **Qualification of directors**

**217 (1)** A citizen or permanent resident of Canada who is a member in good standing of a member of the Central and 18 years of age except

- (a) an undischarged bankrupt;
- (b) an employee, auditor or solicitor of the Central or a deposit insurer;
- (c) a director of a deposit insurer;
- (d) a civil servant whose official duties are concerned with the affairs of the Central or its members; or
- (e) a delegate of a member who fails to comply with the requirements set out in the charter bylaws of the Central,

may be a director of the Central.

- (2) A non-individual shall not be a director of the Central.

- (3) Within a period specified by the Central,
- (a) a person elected or appointed for the first time as a director of the Central; or
  - (b) where required by the Central, every director of the Central who has not completed a director training program,

shall complete a director training program as determined by the Central. 1994, c. 4, s. 210; 2004, c. 11, s. 28; 2010, c. 49, s. 18; 2019, c. 13, s. 30.

#### **Application of other Parts of Act**

**218** With the exception of Sections 82, 84 and 93 and clause 98(5)(e), Part VII and, with the exception of subsection 111(2), Part VIII apply, with necessary changes, to the Central. 2004, c. 11, s. 29.

#### **Auditor**

**219** At each annual meeting of the Central the members of the Central shall appoint an auditor approved by the Superintendent. 1994, c. 4, s. 212.

#### **Credit committee**

**220** The Central shall establish a credit committee as prescribed for the purpose of monitoring the credit granting procedures of credit unions in the Province and the credit committee shall perform those duties assigned to it pursuant to this Act and the regulations. 1994, c. 4, s. 214.

### PART XIII

#### REMEDIES, OFFENCES AND PENALTIES

#### **Interpretation**

**221** In this Part,

“action” means an action pursuant to this Act;

“complainant” means

- (a) a member or former member;
- (b) a registered owner or beneficial owner, or former registered owner or beneficial owner, of a security of a credit union, or the Central;
- (c) a director or an officer, or a former director or officer, of a credit union, the Central or the Corporation or any of their subsidiaries;
- (d) a creditor;
- (e) the Superintendent;
- (f) a credit union;
- (g) the Central;
- (h) the Corporation; or

(h) any other person who, in the discretion of the court, is a proper person to make an application pursuant to this Part. 1994, c. 4, s. 215; 2019, c. 13, s. 31.

#### **Commencing derivative action**

**222 (1)** Subject to subsection (2), a complainant may apply to the court for leave to bring an action in the name and on behalf of a credit union, or intervene in an action to which the credit union is a party, for the purpose of prosecuting, defending or discontinuing the action on behalf of the credit union.

**(2)** A complainant pursuant to this Section shall give the Superintendent notice of the application, and the Superintendent is entitled to appear and be heard in person or by counsel.

**(3)** No action may be brought and no intervention in an action may be made pursuant to subsection (1) unless the court is satisfied that

(a) the complainant has given reasonable notice to the directors of the credit union of the complainant's intention to apply to the court pursuant to subsection (1) if the directors of the credit union do not bring and diligently prosecute or defend, or discontinue the action;

(b) the complainant is acting in good faith; and

(c) it appears to be in the interest of the credit union that the action be brought, prosecuted, defended or discontinued, as the case may be. 1994, c. 4, s. 216.

#### **Powers of court respecting procedure**

**223** In an action brought or intervened in pursuant to Section 222, the court may at any time make any order it thinks fit, including an order

(a) authorizing the complainant or any other person to control the conduct of the action;

(b) giving directions for the conduct of the action;

(c) directing that any amount adjudged payable by the defendant in the action be paid, in whole or in part, directly to former and present members or other security holders of the credit union;

(d) requiring the credit union to pay reasonable legal fees incurred by the complainant in connection with the action;

(e) requiring the credit union to furnish to the complainant or to any other person all material or information relevant to the action, including

(i) the financial statements of the credit union,

(ii) the name and address of each member of the credit union, and

(iii) the name and address of each creditor of the credit union, including any creditor with unliquidated, future or contingent claims and any person with whom the credit union has a contract. 1994, c. 4, s. 217.

**Application to court by complainant and powers of court**

**224 (1)** A complainant may apply to the court for an order pursuant to this Section.

**(2)** Where, upon an application pursuant to subsection (1) with respect to any credit union, the Central or the Corporation, the court is satisfied that

(a) an act or omission of the credit union, the Central or the Corporation effects a result;

(b) the business or affairs of a credit union, the Central or the Corporation are or have been carried on or conducted in a manner; or

(c) the powers of the directors of a credit union, the Central or the Corporation are or have been exercised in a manner,

that is unlawful, unfairly prejudicial or that unreasonably disregards the interests of a complainant, the court may make an order to rectify the matters complained of.

**(3)** In an application pursuant to this Section, the court may make any interim or final order it thinks fit, including

(a) an order restraining the conduct complained of;

(b) an order reinstating a former member as a member or a former director as a director or instating a person who was refused membership;

(c) an order placing a credit union or the Central under supervision pursuant to Sections 245 and 246;

(d) an order placing a credit union under supervision pursuant to Section 245 for the purpose of liquidation and dissolution;

(e) an order to regulate the affairs of a credit union, the Central or the Corporation by amending its articles or bylaws, as the case may be;

(f) an order directing an issue or exchange of securities;

(g) in the case of a credit union or the Central, an order appointing directors in place of or in addition to all or any of the directors then in office;

(h) an order varying or setting aside a transaction or contract to which a credit union, the Central or the Corporation is a party, and compensating the credit union, the Central or the Corporation or any other party to the transaction or contract;

(i) an order directing rectification of the registers or other records of the credit union, the Central or the Corporation pursuant to Section 226;

(j) an order requiring the trial of any issue;

(k) an order compensating a complainant or any other person.

**(4)** Where an order made pursuant to this Section directs an amendment of the articles or bylaws of a credit union or the Central, in the case of

(a) an amendment to the articles, the directors shall forthwith comply with subsection 140(4); and

(b) an amendment to the bylaws, the directors shall forthwith send to the Superintendent the amended bylaws together with a certified copy of the court order,

and no other amendment to the articles or bylaws may be made without consent of the court, until the court otherwise orders.

(5) A member of a credit union is not entitled to dissent pursuant to Section 139 if an amendment to the articles is effected pursuant to this Section. 1994, c. 4, s. 218; 2019, c. 13, s. 32.

#### **Evidence of member approval not decisive**

**225 (1)** An application made or an action brought or intervened in pursuant to this Part must not be stayed or dismissed by reason only that it is shown that an alleged breach of a right or duty owed to a credit union or the Central has been or may be approved by the members thereof, but evidence of approval by the members may be taken into account by the court in making an order pursuant to this Part.

(2) An application made or an action brought or intervened in pursuant to this Part must not be stayed, discontinued, settled or dismissed for want of prosecution without the approval of the court given upon such terms as the court thinks fit and, if the court determines that the interest of any complainant may be substantially affected by the stay, discontinuance, settlement or dismissal, the court may order any party to the application or action to give notice thereof to that complainant.

(3) A complainant is not required to give security for costs in an application made or action brought or intervened in pursuant to this Part.

(4) In an application made or an action brought or intervened in pursuant to this Part, the court may at any time order the credit union, the Central or the Corporation to pay to the complainant interim costs, including legal fees and disbursements, but the complainant may be held accountable for any interim costs so paid upon final disposition of the application or action. 1994, c. 4, s. 219.

#### **Application to court to rectify records**

**226 (1)** Where the name of a person is alleged to be or to have been wrongly registered or retained in, or wrongly deleted or omitted from, the registers or other records of a credit union, the Central or the Corporation, the credit union, the Central or the Corporation or a member or other security holder thereof or any complainant may apply to the court for an order that the registers or records be rectified.

(2) Upon an application pursuant to subsection (1), the court may make any order it thinks fit, including an order

(a) requiring the registers and records of the credit union or the Central to be rectified;

(b) restraining the credit union or the Central from calling or holding a meeting of members or allocating or paying interest before rectification of the registers or records;

(c) determining the right of a party to the proceedings to have that party's name entered or retained in, or deleted or omitted from the registers or records of the credit union or the Central whether the issue arises between two or more members or security holders, or between the credit union or the Central and any member or security holder or alleged member or security holder;

(d) compensating a party who has incurred a loss by reason of the wrongful entry, retention, deletion or omission. 1994, c. 4, s. 220.

#### **Compliance or restraining order**

**227** Where a credit union, the Central or the Corporation, or any director, officer, member, employee, agent, auditor, trustee or supervisor thereof does not comply with or is acting in breach of

- (a) this Act;
- (b) the regulations;
- (c) the articles or bylaws of the credit union or the Central; or
- (d) an order of the Superintendent made pursuant to this Act,

a complainant may, in addition to any other remedy the complainant has, apply to the court for an order directing compliance with or restraining the action in breach of the provision, articles, bylaws or order and the court may make the order and any further order it thinks fit. 1994, c. 4, s. 221.

#### **Application for directions**

**228** The Superintendent may apply to the court for directions in respect of any matter concerning the Superintendent's duties pursuant to this Act and, upon the application, the court may give such directions and make such order as it thinks fit. 1994, c. 4, s. 222.

#### **Appeal of Superintendent's decision**

**229** A person may appeal any decision of the Superintendent to the court within 30 days from the making of the decision. 1994, c. 4, s. 223.

#### **Questions of fact or law**

**230** An appeal pursuant to Section 229 may be made in a question of law or fact, or both, and the court, after hearing the appeal, may

- (a) affirm or reverse the decision;
- (b) direct the Superintendent to make any other decision or order that the Superintendent is authorized to make pursuant to this Act;
- (c) substitute its decision for that of the Superintendent. 1994, c. 4, s. 224.

**Review by Superintendent**

**231 (1)** For the purpose of this Section, “prudential standards” means the principles and minimum requirements adopted by the Superintendent for corporate governance, level of liquidity and equity that contribute to sound and prudent operations of the Central and the Corporation to manage exposure to risk.

**(2) The Superintendent**

(a) shall review or cause to be reviewed information and returns received from credit unions, the Central or the Corporation and their directors, officers, committee members or employees;

(b) may examine or cause to be examined the business and affairs of any credit union, the Central or the Corporation;

(c) must be given access to all records, books, accounts, vouchers and other documents;

(d) may make such inquiries as are necessary to ascertain whether a credit union, the Central or the Corporation has complied with this Act, the regulations or any order or direction.

(e) may issue directives to the Central, including directives with respect to the prudential standards of the Central;

(f) may issue directives to the Corporation, including directives with respect to the prudential standards of the Corporation;

(g) may vary the liquidity reserves required for a credit union by the regulations if an application by the credit union for a variation has been reviewed and recommended by the Corporation and, in the opinion of the Superintendent, the outcome is consistent with the purpose of this Act;

(h) may delegate oversight of the operations of the Central to a third party; and

(i) may recover from the Central costs associated with the supervision of the Central. 1994, c. 4, s. 225; 2019, c. 13, s. 33.

**Exchange of information**

**232 (1)** Notwithstanding the *Freedom of Information and Protection of Privacy Act* and the *Personal Information International Disclosure Protection Act*, the Superintendent may provide information to and receive information from other governmental or regulatory authorities, both in Canada and outside of Canada, approved by the Superintendent to facilitate the exchange of information pursuant to this Act and the regulations.

**(2)** The Superintendent is exempt from the disclosure of information obtained pursuant to subsection (1) if the Superintendent determines the information should be maintained in confidence. 2019, c. 13, s. 34.

**Submission to Superintendent**

**233 (1)** For the purpose of the examination referred to in Section 231, a credit union and the Central shall prepare and submit to the Superintendent such information with respect to its business and affairs, in addition to the returns required pursuant to Part VIII, as the Superintendent may require.

(2) Upon an examination, the Superintendent or any person authorized by the Superintendent has the powers of a commissioner appointed pursuant to the *Public Inquiries Act*. 1994, c. 4, s. 226.

#### **Program of voluntary compliance**

**234 (1)** Where, in the opinion of the Superintendent, a credit union or the Central is committing an act or pursuing a course of conduct that

- (a) does not comply with this Act or the regulations;
- (b) might reasonably be expected, if continued, to result in a state of affairs that would not be in compliance with this Act or the regulations;
- (c) does not comply with an undertaking given or an agreement made with the Minister or Superintendent pursuant to this Act; or
- (d) constitutes a practice that might prejudice or adversely affect the interests of depositors,

the credit union or the Central may enter into a program of voluntary compliance related to any act or course of conduct described in clause (a), (b), (c) or (d).

(2) A voluntary compliance program pursuant to this Section must be in writing and binds the credit union or the Central from the time it is approved by the Minister.

(3) Where a voluntary compliance program has been entered into, the Superintendent is not to be prevented from making orders against the credit union or the Central

- (a) on matters not covered by the program;
- (b) where the program is not complied with, on matters covered in the voluntary compliance program;
- (c) if there has been a deterioration in the condition of the credit union or the Central; or
- (d) on matters covered in the program where all the facts related to the matter covered by the program were not known by the Minister at the time the program was entered into.

(4) The Minister may, on the request of a credit union or the Central, approve the alteration of a voluntary compliance program entered into pursuant to this Section. 1994, c. 4, s. 227.

#### **Notice of order and hearings**

**235 (1)** Where, in the opinion of the Superintendent, a credit union or the Central is committing an act or pursuing a course of conduct that

- (a) does not comply with this Act or the regulations;
- (b) might reasonably be expected, if continued, to result in a state of affairs that would not be in compliance with this Act or the regulations;

(c) does not comply with a voluntary compliance program pursuant to Section 234; or

(d) does not comply with an undertaking given or agreement made with the Minister or the Superintendent pursuant to this Act,

the Superintendent may give notice to the credit union or the Central of an intention to order the credit union or the Central to

(e) cease doing any act or to cease pursuing any course of conduct identified by the Superintendent; or

(f) perform such acts as, in the opinion of the Superintendent, are necessary to remedy the situation.

(2) The credit union or the Central may, by written notice served on the Superintendent within 15 days after the service of the notice on the credit union or the Central pursuant to subsection (1), request a hearing before the Superintendent.

(3) Where no hearing is requested within the time set out in subsection (2) or (4), or where a hearing is held and the Superintendent is of the opinion that an order described in clause (1)(e) or (f) should be made, the Superintendent may make an order under either or both of those clauses which takes effect immediately on its making or at such later date as may be set out in the order.

(4) Notwithstanding subsection (2), where, in the opinion of the Superintendent, the interests of the depositors or the public may be prejudiced or adversely affected by any delay in the issuance of an order, the Superintendent may make an interim order as described in clause (1)(e) or (f) which becomes final on the 15th day after its making unless within that time a hearing before the Superintendent is requested.

(5) A request for a hearing pursuant to subsection (4) must be in writing and served on the Superintendent.

(6) Where a hearing is requested pursuant to subsection (4), the Superintendent may extend the interim order until the hearing is concluded or any appeal from the hearing is concluded and the order is confirmed, varied or revoked.

(7) Where an order is made with respect to a credit union or the Central pursuant to this Section, a copy of the order must be sent to each director of the credit union or the Central.

(8) The Superintendent may, after giving the credit union or the Central named in the order an opportunity to be heard, modify or revoke an order made pursuant to this Section. 1994, c. 4, s. 228.

#### **Appeal of decision to Minister**

**236 (1)** A party to a hearing before the Superintendent may, within 15 days after the receipt of the Superintendent's decision, appeal the decision to the Minister by serving a notice in writing of the appeal on the Superintendent who shall advise the Minister immediately of the appeal and the Minister may hear the appeal or appoint an appeal board to do so.

(2) An appeal must be based on such evidence as may be presented to the Minister or the appeal board and the Minister or the appeal board upon hearing an appeal may confirm, vary or revoke the decision, order, approval or consent that is the subject of the appeal. 1994, c. 4, s. 229.

#### **Minister may impose terms and conditions**

237 (1) Where this Act provides for a decision, order, approval or consent of the Minister, the decision, order, approval or consent is subject to such terms and conditions as the Minister may impose.

(2) A decision, order, approval or consent of the Minister pursuant to this Act must be in writing and is not subject to appeal.

(3) Before rendering a decision, making an order, refusing an approval or consent or granting an approval or consent subject to terms and conditions, the Minister shall give the credit union or the Central notice of the Minister's intention and the credit union or the Central may require a hearing before the Minister.

(4) The Minister may at any time, having given the credit union or the Central an opportunity to be heard confirm, revoke or vary any decision, order, approval, consent or refusal. 1994, c. 4, s. 230.

#### **Superintendent entitled to appear**

238 The Superintendent is entitled to appear and be heard in person or by counsel at a hearing before the Minister or an appeal board. 1994, c. 4, s. 231.

#### **Hearing in private or in public**

239 A hearing before the Superintendent or the Minister or an appeal board, at the discretion of the Superintendent or the Minister or the appeal board, as the case may be, may be heard in private or in public. 1994, c. 4, s. 232.

#### **Offence respecting reports**

240 (1) A person who makes or assists in making a report, return, notice or other document required by this Act to be sent to the Superintendent or to any other person that

- (a) contains an untrue statement of a material fact; or
- (b) omits to state a material fact required therein or necessary to make a statement contained therein not misleading in the light of the circumstances in which it was made,

is guilty of an offence and liable on summary conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding six months, or both.

(2) Where the person guilty of an offence pursuant to subsection (1) is a body corporate, then, whether or not the body corporate has been prosecuted or convicted, a director or officer of the body corporate who knowingly authorizes, permits or acquiesces in the offence is also guilty of an offence and liable on summary conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding six months, or both.

(3) No person is guilty of an offence pursuant to subsection (1) or (2) if the untrue statement or omission was unknown to that person and in the exercise of reasonable diligence could not have been known to that person. 1994, c. 4, s. 233.

#### **Offence**

**241** Every person who, without reasonable cause, contravenes a provision of this Act and no other punishment therefore is provided herein, is guilty of an offence and liable on summary conviction to a fine not exceeding \$500. 1994, c. 4, s. 234.

#### **Order to comply**

**242 (1)** Where a person is convicted of an offence pursuant to this Act, the convicting court may, in addition to any punishment imposed, order the person to comply with the provisions of the Act for the contravention of which that person has been convicted.

(2) A prosecution for an offence pursuant to this Act may be instituted at any time within two years from the time when the subject-matter of the complaint arose.

(3) No civil remedy for an act or omission pursuant to this Act is suspended or affected by reason only that the act or omission is an offence pursuant to this Act. 1994, c. 4, s. 235.

#### **Suit brought by Superintendent or Corporation**

**243** Notwithstanding anything contained in this Part, where an action could be brought against a person by a credit union or the Central for any loss or damage suffered by or any accounting due to the credit union or the Central by reason of the negligence of the person or the failure of the person to comply with this Act, or with the articles or bylaws of the credit union or the Central or any orders, directions or notices of the Superintendent or the Corporation, if

(a) the action has not been brought, the Superintendent or, in the case of a credit union, the Corporation may, without leave, bring and maintain the action; or

(b) the action has been brought, the Superintendent or, in the case of a credit union, the Corporation, may apply to the court to be added as a plaintiff and to be given the conduct of the action,

and any money recovered by the Superintendent or the Corporation must be held for the benefit of the credit union or the Central or, where a grant, loan or advance has been made by the Corporation, must be held for the benefit of the Corporation. 1994, c. 4, s. 236.

#### **No action for damages**

**244** No action for damages lies against the Minister, the Superintendent, the Corporation or any person directed by them, for any act or thing done or omitted pursuant to this Act or the regulations that was done or omitted in good faith. 1994, c. 4, s. 237.

## PART XIV

## SUPERVISION

**Supervision of credit union**

**245** Where the Superintendent is satisfied that a credit union is carrying on its business in a manner that contravenes this Act or the regulations, or that is financially unsound, including those situations where

- (a) a credit union is unable to pay its liabilities as they become due;
- (b) the realizable value of a credit union's assets is less than the aggregate of its liabilities and the capital account of all classes of shares of the credit union, other than common shares;
- (c) a credit union has requested and the Corporation has determined to give it financial assistance;
- (d) a credit union fails to adhere to the operating standards established pursuant to Part V; or
- (e) a credit union fails to file a report or document required to be filed by this Act within the time fixed for filing by this Act,

the Superintendent may give notice to the credit union that it is declared to be under the supervision of a supervisor appointed by the Superintendent. 1994, c. 4, s. 238.

**Supervision of Central**

**246** Where the Superintendent is satisfied that the Central is carrying on its business in a manner that contravenes this Act or the regulations, or that is financially unsound, including those situations where

- (a) the Central is unable to pay its liabilities as they become due;
- (b) the realizable value of the Central's assets is less than the aggregate of its liabilities and the capital account of all classes of shares of the Central;
- (c) the Central is unable to meet its obligations to manage liquidity requirements; or
- (d) the Central fails to file a report or document required to be filed by this Act within the time fixed for filing by this Act,

the Superintendent may give notice to the Central that it is declared to be under the supervision of a supervisor appointed by the Superintendent. 1994, c. 4, s. 239.

**Supervisor of credit union**

**247** The supervisor appointed by the Superintendent pursuant to Section 245 must be the Corporation. 1994, c. 4, s. 240.

**Supervisor of Central**

**248** The supervisor appointed by the Superintendent pursuant to Section 246 must not be the Corporation. 1994, c. 4, s. 241.

**Term of supervision**

**249** Where a credit union or the Central is declared to be under supervision, the credit union or the Central remains subject to the supervision until

- (a) the supervisor applies to the Superintendent to have the credit union or the Central released from supervision;
- (b) it applies in writing to the Superintendent, with notice to the supervisor, to be released from supervision, stating reasons in support of its application, and the Superintendent approves the application;
- (c) the Superintendent, by notice to the credit union or the Central and its supervisor, releases the credit union or the Central from supervision;
- (d) the credit union is liquidated, dissolved or amalgamated; or
- (e) in the case of a credit union or the Central which has been placed under supervision by the court, an order of the court has been made releasing the credit union or the Central from supervision. 1994, c. 4, s. 242.

**Powers and duty of supervisor**

**250 (1)** Subject to the approval of the Superintendent, or to any order of the court, where a credit union or the Central has been placed under the supervision of a supervisor, the supervisor may

- (a) exercise or cause to be exercised any or all of the powers of the credit union or the Central;
- (b) inspect the affairs of the credit union or the Central and make inquiries from its officers, directors, committee members, employees and members;
- (c) require the credit union or the Central to correct any practices that, in the opinion of the supervisor, are contributing to the financial difficulties suffered by the credit union or the Central or are likely to contribute to the unsound conduct of its affairs;
- (d) order the credit union or the Central and its directors, committee members, officers and employees to refrain from exercising in whole or in part, such of the powers of the credit union or the Central or of its directors, committee members, officers or employees or any of them as may be specified in the order unless approved by the supervisor or the supervisor's authorized agent or employee;
- (e) order the credit union or the Central not to declare or pay interest or dividends, or to restrict the amount of interest or dividends to be paid to a rate or an amount fixed by the supervisor;
- (f) carry on, manage and conduct the operations of the credit union or the Central and, in the name of the credit union or the Central, preserve, maintain, realize, dispose of and add to the property of the credit union or the Central, receive the incomes and revenues of the credit union or the Central and exercise all the powers of the credit union or the Central and of its directors, officers, committees and employees;
- (g) exclude the directors of the credit union or the Central and its officers, committee members, employees and agents from the property and business of the credit union;

(h) in the case of a credit union, amalgamate, dissolve, wind-up, liquidate or otherwise dispose of the business of the credit union;

(i) exercise such other powers as may be granted to it by order of the court.

(2) A supervisor shall ensure that the interests of all creditors of a credit union or the Central are properly and lawfully provided for.

(3) A supervisor shall meet with the members of the credit union that has been placed under supervision to explain the supervision and the rationale for any action taken by the supervisor pursuant to subsection (1). 1994, c. 4, s. 243; 2004, c. 11, s. 30.

#### **Court direction**

**251** A supervisor may apply to the court for direction in the exercise of any of its powers. 1994, c. 4, s. 244.

#### **Accounting to Superintendent**

**252** A supervisor appointed by the Superintendent shall, upon request of the Superintendent and upon discharge, fully account to the Superintendent for the supervision of the credit union or the Central. 1994, c. 4, s. 245.

#### **Discharge**

**253** Unless the Superintendent or the court otherwise orders, within 30 days after completion of the final accounting pursuant to Section 252, the supervisor is released from all claims by the credit union or the Central or any member or any creditor thereof other than claims arising out of fraud or dishonesty. 1994, c. 4, s. 246.

#### **Temporary supervision**

**254 (1)** Notwithstanding Section 245, the Corporation may, if the special circumstances of any case so require and upon the grounds of urgency or for other reasons appearing to it to be sufficient, give notice to a credit union that it is declared to be under the temporary supervision of the Corporation.

(2) Where the Corporation acts pursuant to subsection (1), it shall report in writing within 48 hours to the Superintendent, and the Superintendent shall conduct or cause to be conducted such investigation of the reasons for action by the Corporation pursuant to subsection (1) as the Superintendent considers necessary.

(3) The Superintendent shall, within 14 days after the receipt of a report pursuant to subsection (2),

(a) release the credit union from the temporary supervision of the Corporation; or

(b) give notice to the credit union that it is declared to be under supervision pursuant to Section 245. 1994, c. 4, s. 247.

## PART XV

## GENERAL

**Notice to directors and members**

**255 (1)** A notice or document required by this Act, or by the charter bylaws of a credit union, or the Central, to be sent to a person entitled to receive notice from the credit union or the Central may be given in accordance with the charter bylaws or, in the absence of a provision in the charter bylaws, may be sent electronically to the person at the latest electronic mail address of the person as shown in the records of the credit union or the Central, by prepaid mail addressed to, or may be delivered personally to,

(a) the person at the latest address of the person, as shown in the records of the credit union or the Central or its transfer agent; and

(b) in the case of a director, at the latest address of the director, as shown in the records of the credit union or the Central, or in the last notice filed pursuant to Section 90.

**(2)** A notice or document mailed in accordance with subsection (1) is deemed to have been received by the person entitled to receive notice at the time it would be delivered in the ordinary course of mail, unless there are reasonable grounds for believing that the person did not receive the notice or document at that time or at all.

**(3)** Where a credit union or the Central mails a notice or document to a person in accordance with subsection (1) and the notice or document is returned on two consecutive occasions because the person cannot be found, the credit union or the Central is not required to send any further notices or documents to the person until the credit union or the Central is informed, in writing, of that person's new address.

**(4)** Where the charter bylaws of a credit union or the Central provide for the giving of a notice to members pursuant to subsection (1) by insertion of the notice in a newspaper or other publication, the notice is deemed to have been received by the members at the time the publication containing the notice is distributed in the ordinary course.

**(5)** Where the charter bylaws of a credit union or the Central provide for the giving of a notice to members pursuant to subsection (1) by posting the notice in a specified place or places, the notice is deemed to have been received by the members at the time the notice is posted. 1994, c. 4, s. 248; 2019, c. 13, s. 35.

**Notice to and service upon a credit union**

**256** A notice or document required to be sent to or served upon a credit union or the Central may be sent by registered mail to the registered office of the credit union or the Central shown in the last prescribed notice filed with the Superintendent and, if so sent, is deemed to have been received or served at the time it would be delivered in the ordinary course of mail, unless there are reasonable grounds for believing that the credit union or the Central did not receive the notice or document at that time or at all. 1994, c. 4, s. 249.

**Waiver of notice**

**257** Where a notice or document is required by this Act to be given or sent, the giving or sending thereof may be waived or the time for the giving or sending thereof may be waived or abridged at any time with the consent in writing of the person entitled thereto. 1994, c. 4, s. 250.

**Certificate of Superintendent**

**258 (1)** Where this Act requires or authorizes the Superintendent to issue a certificate or to certify any fact, the certificate must be signed by the Superintendent or by a deputy superintendent appointed pursuant to Section 263.

**(2)** A certificate referred to in subsection (1) or a certified copy thereof, when introduced as evidence in any civil, criminal or administrative action or proceeding, is conclusive proof of the facts so certified without proof of the signature or official character of the person appearing to have signed the certificate. 1994, c. 4, s. 251.

**Certificate of credit union or Central**

**259 (1)** A certificate issued on behalf of a credit union or the Central stating any fact that is set out in the articles or the charter bylaws of the credit union or the Central, or in the minutes of the meetings of the directors, a committee of directors or the members of the credit union or the Central, or in a trust indenture or other contract to which the credit union or the Central is a party may be signed by a director, officer or a transfer agent of the credit union or the Central.

**(2)** When introduced as evidence in any civil, criminal or administrative action or proceeding,

- (a) a certificate of a kind referred to in subsection (1);
- (b) a certified extract from a members register or a securities register of a credit union or the Central; or
- (c) a certified copy of minutes or an extract from minutes of a meeting of members or directors or a committee of directors of a credit union or the Central,

is, in the absence of evidence to the contrary, proof of the facts thereby certified without proof of the signature or official character of the person appearing to have signed the certificate.

**(3)** An entry in a securities register of, or a security certificate issued by, a credit union or the Central is, in the absence of evidence to the contrary, proof that the person in whose name the security is registered is the owner of the securities described in the register or in the certificate. 1994, c. 4, s. 252.

**Copies**

**260** Where a notice or document is required to be sent to the Superintendent pursuant to this Act, the Superintendent may accept a photostatic or photographic copy thereof. 1994, c. 4, s. 253.

**Proof required by Superintendent**

**261 (1)** The Superintendent may require that a document or a fact stated in a document required by this Act to be sent to the Superintendent be verified in accordance with subsection (2).

**(2)** A document or fact required by this Act or by the Superintendent to be verified may be verified by affidavit.

**(3)** The Superintendent may require a credit union or the Central to authenticate a document, and the authentication may be signed by the secretary or any director or authorized person or by the solicitor for the credit union or the Central. 1994, c. 4, s. 254.

**Minister has supervision of Act**

**262** The Minister has the general supervision and management of this Act and the regulations. 1994, c. 4, s. 255.

**Appointment of Superintendent and deputy**

**263 (1)** The Governor in Council shall appoint a person in the public service to be the Superintendent of Credit Unions and may appoint one or more deputy superintendents to carry out the purpose of this Act.

**(2)** The Minister or the Superintendent may authorize a deputy superintendent to carry out or exercise any duties or powers that may be carried out or exercised by the Superintendent pursuant to this Act.

**(3)** Notice of the appointment of the Superintendent and deputy superintendents, if any, must be published in the Royal Gazette. 1994, c. 4, s. 256.

**Regulations, forms and fees**

- 264 (1)** The Governor in Council may make regulations
- (a) prescribing any matter required or authorized by this Act to be prescribed;
  - (b) prescribing the form and content of the charter bylaws;
  - (c) respecting the names of credit unions and the Central;
  - (d) prescribing restrictions on the businesses which may be carried on by a credit union;
  - (e) respecting the establishment of branch offices by a credit union;
  - (f) respecting the notice and consultation required before a credit union may close a branch office;
  - (g) respecting the form and content of annual returns, notices and other documents required to be sent to or issued by the Superintendent;
  - (h) respecting the preferences, rights, conditions, restrictions, limitations or prohibitions attaching to shares or classes of shares;

- (i) respecting the designation of classes of shares;
- (j) prescribing an amount which may be paid upon the death of a member;
- (k) respecting conditions, restrictions or limitations on the making of loans or advances of any kind by a credit union;
- (l) respecting the establishment of policies for the granting and making of loans or advances of any kind by a credit union;
- (m) respecting reviews of outstanding loans of any kind;
- (n) prescribing an amount pursuant to Section 48;
- (o) prescribing the circumstances in which a member may be permitted to make overdrafts on deposit accounts of the member and requiring or respecting the establishment of policies of credit unions in respect of overdrafts;
- (p) respecting liquidity reserves, and policies governing adequate liquidity, to be established and maintained;
- (q) respecting conditions, restrictions or limitations on the making of investments;
- (r) respecting an allowance for impaired accounts to be established and maintained;
- (s) prescribing the level of equity, and policies governing equity, to be established and maintained;
- (t) respecting matching pursuant to Section 55;
- (u) respecting insurance to be taken out and maintained by a credit union;
- (v) prescribing the manner in which a person may appeal membership termination;
- (w) prescribing the fees to be paid for services, searches and other things pursuant to this Act and fixing the time and manner of payment thereof;
- (x) prescribing the form and content of financial statements;
- (y) respecting the establishment of an audit committee;
- (z) respecting the manner of selecting and the qualifications of nominees for the board of the Corporation;
- (aa) respecting the establishment of a credit committee;
- (ab) prescribing rules for any exemptions permitted by this Act;
- (ac) prescribing the circumstances in which the Superintendent may waive the payment of fees;
- (ad) prescribing the manner in which this Act must be reviewed periodically;
- (ae) respecting any matter required for the efficient administration of this Act.

(2) The Governor in Council may, in regulations pursuant to subsection (1), provide for the use of forms and statements.

(3) When no fee is fixed in the regulations for any services performed pursuant to this Act, the Minister may fix the fee therefor.

(4) The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*, 1994, c. 4, s. 257; 2019, c. 13, s. 36.

### Filings

**265 (1)** In this Section, “statement” means a statement of intent to dissolve or statement of revocation of intent to dissolve referred to in Section 144.

(2) Where this Act requires that articles or a statement relating to a credit union be sent to the Superintendent, unless otherwise specifically provided herein

(a) two duplicate originals of the articles or the statement must be signed by a director or officer of the credit union or, in the case of articles of incorporation, by the incorporators; and

(b) if the articles or statement conform to law and are accompanied by all the required bylaws or other documents and the fees in respect thereof are paid, the Superintendent shall, subject, where required by this Act, to being satisfied that it is advisable,

(i) endorse on each of the two duplicate originals of the articles or statement the prescribed certificate indicating the date on which the articles or statement become effective,

(ii) file one duplicate original of the articles or statement endorsed in accordance with subclause (i),

(iii) send the other duplicate original of the articles or statement, endorsed in accordance with subclause (i), to the credit union or its representative, and

(iv) publish in the Royal Gazette a notice of the issue of the certificate and the date the articles or statement to which it relates becomes effective.

(3) The date indicated on a certificate issued pursuant to subsection (2) as the date the articles or statement becomes effective must not be earlier than the date on which the Superintendent received the articles or statement or court order pursuant to which the certificate is issued.

(4) The Superintendent may furnish any person with

(a) a certificate that a credit union or other person has or has not filed with the Superintendent a document required to be filed pursuant to this Act or any other Act for which this Act was substituted; or

(b) a certified copy of any document in the custody and control of the Superintendent. 1994, c. 4, s. 258.

**Alteration**

**266** The Superintendent may alter any notice or document, other than an affidavit or statutory declaration, if so authorized by or on behalf of the person who sent the notice or document to the Superintendent. 1994, c. 4, s. 259.

**Corrections**

**267 (1)** Where a certificate or order containing an error is issued by the Superintendent, the Superintendent shall issue a corrected certificate or order and may

- (a) demand the surrender of the certificate or order containing the error; and
- (b) request the directors or members of the credit union to
  - (i) pass resolutions, or
  - (ii) send to the Superintendent the documents required to comply with this Act,

and take such other steps as the Superintendent reasonably requires.

**(2)** A certificate or order corrected pursuant to subsection (1) has effect from the date of the certificate or order it replaces.

**(3)** Where a corrected certificate or order issued pursuant to subsection (1) materially amends the terms of the original certificate or order, the Superintendent shall forthwith give notice of the correction in the Royal Gazette. 1994, c. 4, s. 260.

**Inspection**

**268 (1)** A person who has paid the appropriate fee is entitled during usual business hours to examine the annual returns, notices, articles or charter bylaws of a credit union or the Central or any order or declaration of the Superintendent or court filed with the Superintendent.

**(2)** The Superintendent shall furnish, upon receipt of the appropriate fee, any person with a copy or a certified copy of any document to which reference is made in subsection (1). 1994, c. 4, s. 261.

**Form of records of Superintendent**

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

**(2)** Where records maintained by the Superintendent are prepared and maintained in other than written form

- (a) the Superintendent shall furnish any copy required to be furnished pursuant to subsection 268(2) in intelligible written form; and

(b) a report reproduced from those records, if it is certified by the Superintendent, is admissible in evidence to the same extent as the original records would have been if they had been in written form.

(3) The Superintendent is not required to produce any document, other than a certificate and attached articles or statement filed pursuant to Section 265, after six years from the date the Superintendent receives it. 1994, c. 4, s. 262.

## PART XVI

### TRANSITIONAL

#### Continuation of former incorporations

**270 (1)** Notwithstanding the repeal of the former *Credit Union Act*

(a) all articles;

(b) all cancellations, suspensions, proceedings, acts, registrations and things; and

(c) all affidavits, declarations, bylaws, resolutions, regulations and documents,

are continued pursuant to this Act as if they had in fact been granted, issued, imposed, made, taken, done, commenced, filed or passed pursuant to this Act.

(2) Subject to subsection (4), where any provision of the articles, bylaws or resolutions of a credit union, the Central or the Corporation that

(a) was in force immediately prior to January 1, 1995; and

(b) was not unlawful under the law as it was immediately prior to the date this Act comes into force,

is inconsistent with the provisions of this Act, that provision is not invalid solely for that reason.

(3) Where a provision of the articles, bylaws or resolutions of a credit union, the Central or the Corporation is inconsistent with the provisions of this Act, the credit union, the Central or the Corporation shall file with the Superintendent amending articles, bylaws or resolutions that comply with this Act within two years of January 1, 1995, or within such longer period as may be prescribed.

(4) An addition or amendment to or deletion from any provision in the letters patent, supplementary letters patent, articles, or bylaws of a credit union, the Central or the Corporation must be made in accordance with this Act.

(5) Any reference in an Act, articles, bylaws or resolutions to the former *Credit Union Act*, as it existed before January 1, 1995, or to any procedure pursuant to that Act, is deemed to be a reference to this Act and to the equivalent procedure pursuant to this Act. 1994, c. 4, s. 263.

CHAPTER C-74

**An Act to Prevent Priority  
Among Execution Creditors**

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

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**Short title**

1 This Act may be cited as the *Creditors Relief Act*. R.S., c. 112, s. 1.

**Interpretation**

2 In this Act,

“attachable debt” means a debt that can be made the subject of an execution order issued pursuant to the *Civil Procedure Rules* or an attaching order pursuant to this Act or the *Civil Procedure Rules*;

“clerk” means the clerk of the Supreme Court of Nova Scotia;

“enforcement proceeding” means any proceeding authorized by this Act, the *Assignments and Preferences Act*, the *Collection Act*, the *Judicature Act* or the *Civil Procedure Rules* to be taken for the purpose of enforcing a money judgment or for the purpose of enforcing the claims of creditors against the personal property of a debtor;

“exigible personal property” means any personal property of a judgment debtor that can be made the subject of an enforcement proceeding except a debt that can be made the subject of an enforcement proceeding only by way of an attaching order pursuant to this Act;

“judge” means a judge of the Supreme Court of Nova Scotia;

“judgment creditor” means a person in whose favour there is a subsisting money judgment;

“judgment debtor” means a person against whom there is a subsisting money judgment;

“money judgment” means a judgment or order for the recovery or payment of money or that part of a judgment or order that requires a person to pay money, and includes a certificate pursuant to this Act;

“notice of judgment” and “notice of claim” mean the data authorized by the regulations made pursuant to the *Personal Property Security Act* to be registered in the Registry to effect a registration pursuant to this Act and, where the context permits, includes the data authorized to be registered to effect an amendment, renewal or discharge of a registration;

“personal property” means personal property as defined in the *Personal Property Security Act*;

“Registry” means the Personal Property Registry established by subsection 53(1) of the *Personal Property Security Act*;

“Supreme Court” means the Supreme Court of Nova Scotia. R.S., c. 112, s. 2; 1995-96, c. 13, s. 78.

## PERSONAL PROPERTY SECURITY ACT

### REGISTRATION

#### Registration and discharge

**3 (1)** A judgment creditor who has obtained a money judgment may register a notice of the judgment in the Registry in accordance with the regulations made pursuant to the *Personal Property Security Act*.

**(2)** Registration of a notice of judgment is effective for the period of years specified in the registration to a maximum of 20 years after the date of the judgment to which the registration relates.

**(3)** A registration may be amended or renewed by registering an amendment or renewal of the notice of judgment at any time before the registration expires but the registration must not have an aggregate registration life of more than 20 years after the date of the judgment to which the registration relates.

**(4)** A judgment creditor shall discharge the registration of a notice of judgment within 30 days after the judgment is satisfied or within 30 days after the occurrence of any other event as a result of which there is no longer a subsisting judgment.

**(5)** Where a judgment creditor fails or refuses to comply with subsection (4), the judgment debtor or any other person with an interest in the exigible personal property of the debtor or the attachable debts of the debtor may make a written demand to the judgment creditor to discharge the registration within 15 days after the demand is made.

(6) Where a judgment creditor fails to comply with a demand made pursuant to subsection (5) within 15 days after it is made or fails to give to the person making the demand an order of the Supreme Court confirming that the registration need not be discharged, the person making the demand may register the discharge.

(7) On application by the judgment creditor or judgment debtor or any other person with an interest in the exigible personal property or attachable debts of the debtor, the Supreme Court may order that a registration of a notice of judgment be maintained on any condition and for any period of time or may order that the registration be discharged.

(8) No fee or expense may be charged by a judgment creditor for compliance with a demand made pursuant to this Section. 1995-96, c. 13, s. 78.

### Property bound

4 (1) Personal property of a judgment debtor may not be bound except by registration of a notice of judgment pursuant to subsection 3(1).

(2) Registration of a notice of judgment binds all of the judgment debtor's non-exempt exigible personal property on registration and all non-exempt exigible personal property acquired by the judgment debtor after registration from the time of its acquisition.

(3) Registration of a notice of judgment binds all non-exempt attachable debts owing to the judgment debtor on or after registration from the time the debt becomes an attachable debt except as against the person who owes the debt to the judgment debtor.

(4) Registration of a notice of judgment binds the personal property of the judgment debtor only while the judgment is a subsisting judgment.

(5) Subject to this Section, an interest acquired in personal property that is bound by a registration of a notice of judgment is subordinate to the interest of

- (a) the judgment creditor;
- (b) all persons entitled by this Act or otherwise to participate in a distribution of personal property subject to the interest of a creditor referred to in clause (a); and
- (c) a sheriff and a representative of creditors for the purpose of enforcing the rights of a creditor referred to in clause (a).

(6) A person to whom personal property bound by a notice of judgment is transferred has priority as against the persons referred to in subsection (5) in the same circumstances that a transferee of personal property subject to a security interest perfected by registration has priority as against the secured party under subsections 38(1) to (4), (6) and (8) and Section 40 of the *Personal Property Security Act*, and those provisions apply with necessary changes.

(7) For the purpose of subsection 27(1) of the *Personal Property Security Act* and subject to Section 29 of that Act, the non-exempt exigible personal

property of a judgment debtor and the non-exempt attachable debts of a judgment debtor are bound by registration of a notice of judgment notwithstanding that the security interest referred to in subsection 27(1) of the *Personal Property Security Act* attached before the notice of judgment was registered.

(8) A lien on goods bound by registration of a notice of judgment that arises as a result of the provision in the ordinary course of business of materials or services in respect of the goods has priority over the interest of the judgment creditor in the goods.

(9) An enforcement proceeding for the purpose of enforcing a money judgment may not be commenced until a notice of judgment relating to the judgment has been registered pursuant to subsection 3(1).

(10) Where an interest acquired in personal property that is bound by registration of a notice of judgment is subordinate to the interest of a judgment creditor,

(a) the property is subject to enforcement proceedings to the same extent as if the subordinate interest did not exist; and

(b) a person who acquires the property as a result of enforcement proceedings obtains title free of the subordinate interest.

(11) Personal property of a judgment debtor that is bound by the registration of a notice of judgment is bound for the amount of the judgment, costs and accrued interest less any amounts received by the judgment creditor.

(12) An interest in personal property is not subordinate to the interest of a judgment creditor who has registered a notice of judgment by reason only that the interest is subordinate to the interest of another judgment creditor who has registered a notice of judgment but nothing in this Section creates any priority as between judgment creditors who have registered notices of judgment.

(13) A judgment creditor is not entitled to share in the proceeds of a levy by the sheriff against the personal property of the judgment debtor pursuant to this Act unless the creditor has registered a notice of judgment pursuant to subsection 3(1).

(14) In applying the provisions of this Act for the purpose of determining the entitlement of creditors to share in the proceeds of a levy by the sheriff, a reference to an execution or certificate or the delivery of an execution or certificate to the sheriff is to be construed as a reference to a registered notice of judgment or the registration of a notice of judgment, unless the context otherwise requires.

(15) Where a notice of judgment has been registered, the judgment creditor, the judgment debtor or any other person with an interest in personal property of the judgment debtor may apply to the Supreme Court for an order determining whether or not any item or kind of personal property is exempt, exigible or an attachable debt.

(16) A person referred to in subsection (15) may amend the registration of the notice of judgment to disclose the particulars of the order made pursuant to that subsection. 1995-96, c. 13, s. 78.

**Notice of claim**

**5 (1)** A notice of claim may be registered in the Registry in accordance with the regulations made pursuant to the *Personal Property Security Act* by

(a) a creditor who has applied for a warrant pursuant to the *Collection Act* at any time after the warrant is issued;

(b) an assignee for the general benefit of creditors under the *Assignments and Preferences Act* at any time after the assignment is made.

**(2)** The commencement of any enforcement proceeding pursuant to any of the enactments referred to in subsection (1) does not prejudice the interest of a person to whom personal property that is the subject of the enforcement proceeding is transferred without knowledge until a notice of claim relating to the enforcement proceeding is registered pursuant to subsection (1). 1995-96, c. 13, s. 78.

**Exempt property**

**6 (1)** Property that is exempt from an enforcement proceeding is not bound by the registration of a notice of judgment under subsection 3(1).

**(2)** For the purpose of subsection (1), property that is exempt from seizure under Section 70 of the *Personal Property Security Act* is property exempt from an enforcement proceeding. 1995-96, c. 13, s. 78.

**Conflict**

**7** Where there is a conflict between Sections 3 to 6 and any other provision of this Act or of the *Assignments and Preferences Act*, the *Judicature Act* or the *Civil Procedure Rules*, Sections 3 to 6 prevail. 1995-96, c. 13, s. 78.

## APPLICATION

**No priority**

**8** Subject to this Act, there is no priority among creditors in the distribution of proceeds of personal property taken under execution from the Supreme Court. R.S., c. 112, s. 3.

**Distribution among creditors**

**9 (1)** Where a sheriff levies money upon an execution against the personal property of a debtor where the amount indorsed to levy is \$100 or upwards, the sheriff shall forthwith enter in a book to be kept in the sheriff's office, open to public inspection without charge, a notice stating that such levy has been made, and the amount thereof and the money must thereafter be distributed rateably amongst all execution creditors and other creditors whose orders or certificates given under this Act were in the sheriff's hands at the time of the levy, or who delivers their orders or certificates to that sheriff within one month from the entry of the notice subject, however, to provisions hereinafter contained as to the retention of dividends in the case of contested claims, and to the payment of the costs of the creditor under whose order the amount was made.

**(2)** The notice must state the day upon which it was entered and may be in the form prescribed by the regulations.

(3) Subsections (1) and (2) do not apply to any money received by a sheriff as the proceeds of a sale of property by the sheriff under an interpleader order, but upon the determination of the interpleader issue in favour of the creditors, the money, whether in the sheriff's hands or in court pending the trial of the issue, must be distributed by the sheriff among the creditors contesting the adverse claims.

(4) Where proceedings are taken by the sheriff or other officer for relief under any provisions relating to interpleader, those creditors only who are parties thereto and who agree to contribute pro rata, in proportion to the amount of their executions or certificates, to the expense of contesting any adverse claim, are entitled to share in any benefit which may be derived from the contestation of such claim so far as may be necessary to satisfy their executions or certificates and the court or judge may direct that one creditor shall have the carriage of the interpleader proceedings on behalf of all creditors interested, and the costs thereof, as between solicitor and client, are a first charge upon the money or goods which may be found by the proceedings to be applicable upon the executions or certificates.

(5) In subsection (4), "adverse claim" means any claim to contest which an interpleader issue is directed, and upon any interpleader's application the court or judge shall have a discretion to allow to other creditors who desire to take part in the contest a reasonable time in which to place their executions in the sheriff's hands, upon such terms as to costs and otherwise as may be just and reasonable.

(6) Where the sheriff subsequently to the entry of the notice, but within the month, levies a further amount from the property of a debtor, the same must be dealt with as if such amount had been levied prior to the entry of the notice, but if after the month a further amount is levied, a new notice must be entered, and the distribution to be made of the amount so levied, and of the further amount levied within a month of the entry of the last mentioned notice, must be governed by the entry thereof in accordance with the foregoing provisions of this Section, and so on from time to time. R.S., c. 112, s. 4.

#### **Disentitlement**

10 No creditor is entitled to share in the distribution of money levied from the property of a debtor unless, either by the delivery of an order of execution or otherwise under this Act, the creditor has established a claim against the debtor, either alone or jointly with some other person. R.S., c. 112, s. 5.

#### **Proceedings by other creditors**

11 Where a debtor permits an execution issued against the debtor, which is indorsed to levy for \$100 or upwards, under which any of the debtor's goods or chattels are seized by a sheriff, to remain unsatisfied in the sheriff's hands until within two days of the time fixed by the sheriff for the sale thereof, or for 20 days after the seizure, the proceedings hereinafter authorized may be taken by other creditors as claimants in respect of debts, whether the same are overdue or not, provided however, that in any proceedings taken in respect of claims not due, there must be a rebate of interest for the time which would elapse before such debt will be due. R.S., c. 112, s. 6.

## AFFIDAVIT OF CLAIM

**Required documents**

**12 (1)** An affidavit, called the “affidavit of claim”, to the effect of the form prescribed by the regulations, of the debt and the particulars thereof, may be made in duplicate by the creditor, or by one of the creditors in the case of a joint debt, or by a person cognizant of the facts, and prior to or simultaneously with the filing with the clerk of the Supreme Court of the affidavit, there must be filed with the clerk the certificate of the sheriff showing that such proceedings have been had against the debtor as entitle the creditor to proceed under this Act.

**(2)** The claimant shall serve on the debtor one of the duplicates, and a notice stating that the claimant intends to file the other duplicate with the clerk of the Supreme Court, by reason of there being in the sheriff’s hands an order of execution against the goods and chattels of the debtor, and that the claimant intends to call on the sheriff to levy the said debt out of the personal property of the debtor under the authority of this Act, which notice is to contain the other particulars shown in the form prescribed by the regulations.

**(3)** The notice may be either attached to the affidavit served, or indorsed thereon.

**(4)** Where the affidavit and notice are to be served out of the Province, the judge shall limit the time at which the next step may be taken by the claimant as hereinafter provided. R.S., c. 112, s. 7.

**Service and filing**

**13 (1)** An execution debtor may give notice in writing to the sheriff that any claims to be served upon the execution debtor may be served upon any solicitor in the Province whose name and address must be given, or by mailing the same to an address stated in the notice and the sheriff shall thereupon enter the notice in the book referred to in subsection 9(1), and while any execution that was in the sheriff’s hands at the time the notice was given remains in the sheriff’s hands, shall repeat such entry immediately below any notice, as prescribed by the regulations, given in respect of the execution, unless the notice is revoked in writing, in which case the entry or entries thereof must be marked “revoked.”

**(2)** Where the notice is not so revoked, an affidavit of claim made under this Act and the accompanying notice may, where a solicitor is named, be served upon an execution debtor by serving the same upon the solicitor, in accordance with this Act, or if mailing is required, then by mailing the same, enclosed in an envelope, postage prepaid, and registered, to the address given in the notice.

**(3)** Where the notice, as prescribed by the regulations, served on a debtor does not state some place in, or within three miles of the office of the clerk of the Supreme Court with whom the affidavit of claim is filed, at which service may be made upon the claimant, or does not give the name and address of some solicitor in the Province who may be served on the claimant’s behalf, service of any notice, paper or document requiring service may be made upon the claimant by mailing the same prepaid and registered, enclosed in an envelope addressed to the claimant at the office of the clerk of the Supreme Court with whom the affidavit of claim is filed.

(4) The claimant shall file with the clerk of the Supreme Court, one of the duplicate affidavits of claim, and a copy of the notice with an affidavit of due service, which affidavit may be in the form prescribed by the regulations.

(5) The copy of the affidavit and the notice must, where practicable, be personally served upon the debtor by any literate person but if it is made to appear to a judge that the claimant is unable to effect prompt personal service, the judge may order substituted or other service, or may appoint some act to be done which is deemed sufficient service. R.S., c. 112, s. 8.

#### CERTIFICATE

##### **Certificate of clerk**

14 (1) Where the claim is not contested in the manner mentioned hereinafter, the clerk of the Supreme Court with whom the affidavit of claim is filed, after 10 days from the day of personal service or service under subsection 13(2), or within the time mentioned in the order, as the case may be, on application and the filing with the clerk of proof of personal service upon the debtor of an affidavit and notice in accordance with this Act or proof of compliance with a judge's order in that behalf, or upon the determination of the dispute in favour of the claimant either in whole or in part, shall deliver to the creditor or any one in the creditor's behalf a certificate to the effect of the form prescribed by the regulations, and in case the claim is only disputed as to a part the creditor may elect, by writing, filed with the clerk, to abandon such part and obtain a certificate as to the residue.

(2) The certificate must be delivered to the sheriff, and thereby from the time of the delivery the claimant is deemed to be an execution creditor within the meaning of this Act, and to be entitled to share in whatever is made under the executions of creditors in the sheriff's hands, as if the creditor had delivered to the sheriff an execution against the goods, and the certificate in like manner binds the goods of the debtor, subject, however, to the debt being afterwards disputed by a creditor as hereinbefore provided.

(3) A certificate under this Act is, in interpleader proceedings, deemed to be an execution.

(4) Where the certificate is obtained by a solicitor, the name and place of abode of the solicitor must be indorsed thereon, and if the certificate is sued out by the claimant in person, there must be indorsed thereon a statement of some place in or within two miles of the office of the clerk of the Supreme Court with whom the affidavit of claim is filed, at which service may be made upon the claimant, and in default thereof service of any notice, paper or document requiring service, may be made upon the claimant by mailing the same prepaid and registered, enclosed in an envelope addressed to the claimant at the office of the clerk of the Supreme Court with whom the affidavit of claim is filed.

(5) On receiving the certificate, the sheriff shall make a further seizure of the goods and chattels, if any, of the debtor to the amount of the debt so claimed and the sheriff's fees and so on from time to time, in case more certificates are received after the further seizure so made.

(6) A certificate issued under this Act remains in force for one year from the date thereof, and no longer unless renewed, but such certificate may

from time to time be renewed in the same manner as an order of execution, but notwithstanding the expiry of an order or certificate during the month within which a notice of levy was made is under this Act required to be posted, the said order and certificate are, as to any money levied during such month, deemed to be in full force and effect. R.S., c. 112, s. 9.

#### CONTESTATION OF CLAIM

##### **Right to contest and procedure**

**15 (1)** The claim may be contested by the execution debtor or by a creditor interested in contesting the same.

**(2)** Where the debtor contests the claim, the debtor shall for that purpose file with the clerk of the Supreme Court with whom the affidavit of claim is filed, an affidavit stating that the debtor has a good defence to the claim, or to a specified part of the claim, on the merits, but the judge may dispense with the affidavit on terms or otherwise.

**(3)** The debtor shall file the affidavit and serve upon the claimant a copy thereof, within 10 days after the personal service, or service under subsection 13(2), upon the debtor of the affidavit of claim and the notice, or within the time which the judge by an order dispensing with personal service directs, or within any further time the judge may allow.

**(4)** The affidavit must have indorsed thereon a statement of some place in or within three miles of the office of the clerk of the Supreme Court, with whom the affidavit of claim is filed, at which service may be made upon the debtor, or the address of some solicitor in the Province who may be served on the debtor's behalf, and in default thereof, service of any notice, paper or document, requiring service, may be made upon the debtor by mailing the same, prepaid and registered, enclosed in an envelope and addressed to the debtor at the office of the clerk of the Supreme Court with whom the affidavit of claim is filed.

**(5)** Where the contest is by a creditor, the creditor shall for that purpose file with the clerk of the Supreme Court with whom the affidavit of claim is filed, an affidavit to the effect that the creditor has reason to believe that the debt claimed is not really and in good faith due from the debtor to the claimant but the judge may dispense with the affidavit on terms or otherwise.

**(6)** Such affidavit by a creditor may be so filed and a certificate thereof delivered to the sheriff at any time before distribution is made. R.S., c. 112, s. 10.

##### **Consequences of contest**

**16 (1)** Where a claim being contested by a creditor after a certificate has been placed in the sheriff's hands, the sheriff, unless the judge otherwise orders, shall proceed and levy as if such contestation had not been made, and the sheriff shall, until the determination of the contestation, retain in the bank the amount which would be apportionable to the claim if valid, and the sheriff shall as soon after the expiry of the month as practicable distribute the residue of the money made amongst those entitled.

(2) The claimant whose claim is contested may apply to a judge for an order allowing the claimant's claim and determining the amount, and in case the claimant does not make such application within eight days of receiving notice of the contestation, or within such further time, if any, as the judge, upon the delay being reasonably accounted for, may allow, the claimant shall be taken to have abandoned the claimant's claim and if the contestant is a creditor and there is reason to believe that the contestation is not being carried on in good faith, any other creditor may apply for an order permitting the creditor to intervene in the contest. R.S., c. 112, s. 11.

#### **Powers of judge**

17 (1) The judge may determine any question in dispute in a summary manner, or may direct an action or issue for the trial of such question, and may make such order as to the costs of the proceedings as may be just.

(2) Where there is a dispute as to material facts and the sum in controversy appears to be over \$400, exclusive of costs, the judge shall direct the trial to be in the Supreme Court, and may fix the place of trial, subject to any order which the Supreme Court or a judge thereof may see fit to make in that behalf, and if an issue is directed it must be tried in all respects as if it had been an action in the Court in which it is ordered to be tried. R.S., c. 112, s. 12.

#### **Examination**

18 The same proceedings may be had for the examination of parties and others either before or at the trial as may be taken in an ordinary action, and such proceedings may also be taken prior to the application to the judge and as a foundation therefor. R.S., c. 112, s. 13.

### PROCEEDINGS IN ANOTHER COUNTY

#### **Certificate**

19 Where a creditor has taken in one county the prescribed proceedings in respect of the creditor's claim, and desires to establish a claim for the purposes of this Act in another county also, the creditor may do so by obtaining from the said court clerk another certificate, as prescribed by the regulations, and delivering the same to the sheriff of such other county, and the delivery of the certificate to the sheriff has the same effect for the purpose of this Act in the county in which the same takes place, from the day of the delivery, as if a new notice and affidavit of claim had been served for the county, and other proceedings had in respect thereof under the previous provisions of this Act. R.S., c. 112, s. 14.

#### **Execution in any county**

20 A creditor entitled to a certificate from the court clerk may sue out an order of execution against personal property into any county in the same manner as on an ordinary judgment. R.S., c. 112, s. 15.

#### **Effect of decision and right to certificate**

21 (1) Where a claim is contested in one county, the decision thereon, as between the parties to it, determines the amount of the claim for the purpose of this Act in all other counties in which the claim is filed and the certificate of

the clerk of the Supreme Court in which the trial has taken place of the result thereof is prima facie proof of the decision.

(2) A certificate must, upon payment of a fee of 50¢, be granted to any party to the proceedings who applies therefor. R.S., c. 112, s. 16.

#### **Deemed execution**

22 A creditor who has recovered a judgment in any court other than in the Supreme Court may serve upon the sheriff a memorandum of the amount of the creditor's judgment and of the costs to which the creditor is entitled, certified under the hand of the clerk of the court, in case there is such clerk, and if not under the hand of the presiding justice, and the memorandum so served has the same effect for the purpose of this Act as if the creditor had delivered to the sheriff an order of execution directed to the said sheriff from the Supreme Court or a certificate from such clerk under this Act. R.S., c. 112, s. 17.

#### ENTRIES TO BE MADE BY CLERK

#### **Entry book**

23 (1) The clerk of the Supreme Court shall keep a book in which, before granting a certificate or issuing an execution for a claim, the clerk shall enter the following particulars with reference to every claim in respect of which the clerk gives a certificate under this Act:

- (a) the name of the claimant and of the debtor;
- (b) the date of entry of judgment;
- (c) the amount of debt, exclusive of costs;
- (d) the amount of costs;
- (e) if the proceedings have been set aside, this fact, and shortly the reason therefor.

(2) The entry is, for the purpose of this Act, an award of judgment for the debt and costs, and, except as to lands, has the same effect as an entry of judgment for default of defense to a claim for a liquidated demand only and the clerk shall index the entries in the book alphabetically under the name of every debtor.

(3) Where the original papers are lost or destroyed, a copy of the entry in the book is evidence of all matters therein set forth. R.S., c. 112, s. 18.

#### **Extension of time for payment**

24 (1) With respect to claims, the judge, before or after a certificate is issued by the clerk under this Act or delivered to the sheriff, may, on the application of a debtor and notice to a claimant, give to the debtor further time to pay the claim where the judge is of the opinion that this can be done without injustice to the creditor, or may give to the debtor further time on terms which in the opinion of the judge may be just, and there may be successive orders for this purpose, but no claim may be delayed by such orders for more than three months in all.

(2) This Section does not apply to creditors who have obtained judgment in the ordinary way and the orders for time are not to prejudice executions obtained by such creditors on such judgments. R.S., c. 112, s. 19.

#### PAYMENT BY DEBTOR

##### No further proceedings

**25** (1) Where the debtor, without any sale by the sheriff, pays the full amount owing in respect of the executions and claims in the sheriff's hands at the time of such payment, and no other claim has been filed with the clerk of the Supreme Court, or where all executions and claims in the sheriff's hands are withdrawn, and any claims served are paid or withdrawn, no notice may be entered as required by Section 9, and no further proceedings may be taken under this Act against the debtor by virtue of the executions in the sheriff's hands.

(2) Except as aforesaid, after a certificate has been filed with the sheriff, the withdrawal or expiry of the order upon which the proceedings are founded, or any stay upon the order, or the satisfaction of the plaintiff's claims thereon, or the setting aside or return of the order, must not affect the proceedings to be taken under this Act, and except so far as the action taken in regard to the order may affect the amount to be levied, the sheriff shall proceed and levy upon the goods of the debtor as the sheriff would have proceeded had the order or orders remained in the sheriff's hands in full force to be executed.

(3) Where a debtor voluntarily and without any sale by the sheriff pays to the sheriff part of the amount owing in respect of an execution or claim in the sheriff's hands, and there is at the time no other execution or claim in the sheriff's hands, the sheriff shall apply the same on the execution or claim so in the sheriff's hands, and Section 9 does not apply to the money so received by the sheriff. R.S., c. 112, s. 20.

##### Priority of costs

**26** Where proceedings have been taken against a debtor under the rules of the Supreme Court respecting absconding debtors and the debtor's personal property has been attached before an execution has been placed in the hands of the sheriff and sold under the order of the court or a judge, the cost of the order for sale or if there be more than one, the one first placed in the sheriff's hands, and the proceedings thereon, have priority over the claims of all other creditors, but otherwise the sheriff shall distribute such personal property under this Act, and for such purposes the money realized from such sale is deemed personal property of the debtor in the hands of a sheriff, and, except as respecting such personal property, must realize the estate of the debtor as provided by the rules respecting absconding debtors. R.S., c. 112, s. 21.

#### COSTS

##### Items included

**27** The clerk shall ascertain and state in the certificate the amount of the costs to which the claimant is entitled as against the debtor and such costs must be the following:

(a) the fees to be allowed to the sheriff and the clerk of the Supreme Court must be the same as they respectively are allowed for like proceedings in the Supreme Court;

(b) where there is no contest, the sum of five dollars for the fees of a solicitor, if employed;

(c) in case of a contest, such additional costs as the judge or taxing master may allow according to the scale of the Supreme Court applicable to the amount in dispute;

(d) the costs of obtaining an order for substituted service, or other similar service, and of such service, or the costs of and incidental to service out of the Province, in either case to be taxed by the judge, except in Halifax County, where they may be taxed before the taxing master. R.S., c. 112, s. 22.

## DISTRIBUTION

### Funds of debtor

**28** Where there is in any court a fund belonging to an execution debtor, or to which the execution debtor is entitled, the same or a sufficient part thereof to meet the claims in the sheriff's hands may, on the application of the sheriff or any party interested, be paid over to the sheriff, and the same is deemed to be money levied under execution within the meaning of this Act. R.S., c. 112, s. 23.

### Amount levied less than claims

**29 (1)** Where the amount levied by the sheriff is not sufficient to pay the execution debts and other claims with costs in full, the money must be applied, after retaining the sheriff's fees and after payment in full of the taxed costs and the costs of the execution, to the creditor at whose instance and under whose execution seizure and levy were made, to the paying in priority to all other claims the wages or salaries of all persons in the employment of the execution debtor at the time of the levy or within one month before the making of the levy, not exceeding three months wages or salary, and such persons are entitled to rank rateably with other creditors for the residue, if any, of their claims.

**(2)** Where, however, there is insufficient money, after paying the costs and fees as hereinbefore provided, to pay in full the privileged claim for wages or salaries, such claims must be paid rateably.

**(3)** After the payment of the sheriff's fees, the taxed costs and the costs of the execution and of said privileged claims for wages or salaries as herein provided, then the balance, if any, of the money in the hands of the sheriff must be applied rateably to the payment of all other debts and costs of the creditors who have complied with this Act. R.S., c. 112, s. 24.

### Additional amounts levied

**30** The sheriff, if directed by an indorsement upon the certificate, shall, in addition to the amounts named in the certificate, levy interest thereon from the date of the certificate or the date named in that behalf in the certificate, and also the sum of \$1.35 for the disbursements on every renewal of the certificate, and where such renewal is made upon the application of a solicitor, the sheriff shall levy the further sum of \$1.25 for the solicitor's costs on the renewal. R.S., c. 112, s. 25.

**Poundage**

**31** Where money is to be distributed by a sheriff under this Act, the sheriff is not entitled to poundage as upon separate claims, but only upon the net proceeds of the estate distributable to the sheriff, and at the same rate as if the whole amount had been payable upon one claim. R.S., c. 112, s. 26.

**Money made**

**32 (1)** Where money is made upon a claim the same shall be taken for the purpose of the sheriff's return, and otherwise to be made upon all the claims or certificates entitled to the benefit thereof, and the sheriff shall, upon payment being made to the person entitled upon such a claim or certificate, indorse thereon a memorandum of the amount so paid, but the sheriff shall not, except on the request of the party so issuing the claim, or by direction of the court out of which the same issues, or of a judge having the authority of a judge of such court, return the claim until the same has been fully satisfied or unless the same has expired by effluxion of time, in which case the sheriff shall make a formal return of the amount made thereon.

**(2)** The like proceedings may be taken to compel payment by the sheriff of money payable in respect of an execution or other claim as can now be had to compel the return by the sheriff of an order of execution. R.S., c. 112, s. 27.

**Particulars for sheriff's book**

**33** The sheriff shall, pending the distribution of money levied, keep in the book mentioned in Section 9, in the sheriff's office a statement according to the form prescribed by the regulations showing, in respect of any debtor of whose property money has been levied, the following particulars:

- (a) the amounts levied and the dates of levy;
- (b) each execution, certificate or order in the sheriff's hands at the time of entering the notice, as prescribed by the regulations, required by Section 9, or subsequently received during the month, the amount thereof for debt and costs and the date of receipt, and such statement must be amended from time to time as an additional amount is levied, or a new execution, certificate or order is received. R.S., c. 112, s. 28.

**Information from sheriff**

**34** The sheriff shall at all times, without fee, answer any reasonable questions which the sheriff may be asked orally in respect to the estate of the debtor by a creditor or anyone acting on behalf of a creditor, and shall facilitate the obtaining by the creditor of full information as to the value of the estate, and the probable dividend to be realized therefrom in the creditor's county, or any other information in connection with the estate which the creditor may reasonably desire to obtain. R.S., c. 112, s. 29.

**Distribution by sheriff**

**35** Where the money levied is insufficient to pay all claims in full and the time has come for distributing the money levied, the sheriff may forthwith distribute the same, as directed by this Act, or the sheriff may first prepare for examination by the debtor and the debtor's creditors, a list of the creditors entitled to share in the distribution of the amount levied, with the amount due to each for principal,

interest and costs, the list to be arranged so as among other things to show the amount going to each creditor under this Act, and the total amount to be distributed, and the sheriff may deliver or send, prepaid and registered, by post, to each creditor or the creditor's solicitor, a copy of the list, with the several particulars aforesaid, and in such case the further proceeding may be as follows:

(a) if within eight days after all the said copies have been delivered or posted, or within any further time the judge may allow, no objection is made as provided by this Act, the sheriff shall make distribution forthwith pursuant to such list;

(b) in case an objection is made, as provided by this Act, the sheriff shall forthwith distribute such an amount of the money made to such persons *pari passu* as may not interfere with the effect of the objection in case the same should be allowed;

(c) the sheriff may disregard objections which are frivolous or manifestly insufficient to interfere with the distribution proposed, and distribute as if such objections had not been made;

(d) any person prejudiced by the proposed scheme of distribution may contest the same by giving notice in claiming to the sheriff, stating therein distinctly the person's objections to the scheme, or any part thereof, and the grounds of objection, and by at the same time delivering to the sheriff an affidavit of the previous service of a copy of the notice on the debtor and creditors interested in resisting the objection, unless the judge by order has dispensed with service or an affidavit of service as the judge has sanctioned;

(e) the contestant shall within eight days thereafter apply, upon notice to the judge for an order adjudicating upon the matter in dispute, and otherwise the contestation shall be taken to be abandoned and the notice may be in the form prescribed by the regulations;

(f) the judge may determine any question in dispute in a summary manner, or may direct an issue or action for the trial of such question, either by a jury or otherwise, and may make such order as to the costs of the proceedings as may be just;

(g) in the event a claimant under a contestation is held not entitled, or only entitled to part of the claimant's claim, the money retained pending contestation, or the portion as to which the claimant has failed, must be distributed among the execution creditors and other creditors entitled thereto as the same would have been distributed had the claim in respect thereof not been made. R.S., c. 112, s. 30.

#### **Directions by judge**

**36** Where several creditors are interested in a contestation, either for or against the same, the judge shall give such directions for saving the expense of an unnecessary number of parties and trials, and unnecessary proceedings, as may be just, and the judge shall direct by whom and in what proportion any costs incurred in the contestation or in any proceedings thereunder must be paid, and whether any and what costs must be paid out of the money levied. R.S., c. 112, s. 31.

**Order to levy**

**37 (1)** The judge may, if the judge sees fit, direct the sheriff to levy for the amount sufficient to cover a claim in dispute or part thereof, or in case it appears to the judge that it is improbable that the defendant has other sufficient property, the judge may order the sheriff to retain in the sheriff's hands during the contestation the share which if the claim is sustained will be apportionable to it, or may make an order combining the orders above authorized, or such similar order as may be just.

**(2)** An order to levy under this Section gives the sheriff the same authority as the sheriff would possess under an order of execution duly issued against the debtor, directing the sheriff to levy the right amount out of the goods of the debtor. R.S., c. 112, s. 32.

**Decision binding**

**38** The decision under this Act of a Supreme Court judge or a judge of the Nova Scotia Court of Appeal on an appeal, binds all creditors, unless it appears that the decision was obtained by fraud or collusion by the parties to the contestation. R.S., c. 112, s. 33.

**Deposit of unpaid money**

**39 (1)** Where a sheriff has money in the sheriff's hands which, by reason of the provisions of this Act or otherwise, the sheriff cannot immediately pay over to the execution creditors or other claimants under this Act, the sheriff shall deposit the money, whenever the same amounts to \$100, in some incorporated bank designated for this purpose by the Governor in Council.

**(2)** The deposit must be made in the name of the sheriff, but to a special account in the sheriff's name as trustee for the creditors of the debtor. R.S., c. 112, s. 34.

## ATTACHING ORDERS

**Attachment of debt**

**40 (1)** Where there are in the sheriff's hands several executions and claims, and there are not or do not appear to be sufficient goods to pay all and the sheriff's own fees, the sheriff may apply for an order attaching any debt owing to the execution debtor by any person resident in the county of such sheriff, whether the debt is owing by such person alone or jointly with another person resident or not resident in such county, and to procure the attachment the sheriff may take the same proceedings as a creditor, and in such case an order of execution or other claim in the course of the proceedings may be directed to the sheriff in the same manner as if the attachment were by a creditor and the proceeds of the debts attached must be distributed in the same manner as if the sheriff had realized the same under execution.

**(2)** Where the sheriff does not take such proceedings, any person entitled to distribution may take the same for the benefit of that person and all other persons entitled to distribution as aforesaid, and the person owing the attached debt shall pay the same to the sheriff.

(3) Any judgment creditor who attaches a debt is deemed to do so for the judgment creditor's benefit and all creditors entitled under this Act, payment of such debt must be made to the sheriff, who, in making a distribution, shall apportion to such judgment creditor a share pro rata, according to the amount, upon judgment creditor's judgment, of the whole amount to be distributed under the provisions of this Act, but such share must not exceed the amount recovered by the garnishee proceedings unless the judgment creditor has placed an order in the sheriff's hands.

(4) Money garnisheed and paid into the sheriff's hands is deemed to be money levied under execution within the meaning of this Act, except that, unless the garnishee proceedings were taken by the sheriff, the sheriff shall only be entitled to charge poundage upon such money at the rate of one and a quarter per cent.

(5) Where a garnishee under an order of the court pays to the attaching creditor, or in case a garnishee without notice that the sheriff is entitled, pays the amount of the garnishee's debt into court and the same is paid out to said creditor, the sheriff may recover from the creditor the amount so received, after deducting any costs that may have been allowed to the sheriff in such garnishee proceeding. R.S., c. 112, s. 35.

## APPEAL

### Appeal

41 Where any party to any contestation, matter or thing upon which a judge has made or rendered any final order or judgment is dissatisfied with such order or judgment and the same is in respect to a question involving a sum greater than \$100, the judge may appeal therefrom to the Nova Scotia Court of Appeal, subject to the like practice as nearly as may be as is from time to time in force in respect of appeals from a Supreme Court or judge, unless and until rules establishing a different practice are made under the *Judicature Act*. R.S., c. 112, s. 36.

## MISCELLANEOUS

### Powers of judge

42 A judge, for the purpose of giving effect to this Act and carrying out its provisions, has all the powers which a Supreme Court or a judge thereof has by law for other purposes, and any proceedings wrongly taken under this Act may be set aside by the judge with or without costs, as the judge sees fit. R.S., c. 112, s. 37.

### Practice and procedure

43 Subject to this Act, the practice and procedure applicable to all proceedings taken under this Act are those which for the time being are prescribed for similar proceedings and matters, and under like conditions, in the Supreme Court. R.S., c. 112, s. 39.

### Irregularities

44 No proceedings under this Act are void for any defect of form and the rules for amending or otherwise curing irregularities or defects which may from time to time be in force in the Supreme Court apply to this Act. R.S., c. 112, s. 40.

**Law stamp and fees**

**45 (1)** In addition to the fees otherwise authorized to be paid to the clerk of the Supreme Court for the clerk's own use, there must be levied upon the filing of every affidavit of claim, where the claim exceeds \$80, the sum of 50¢, to be paid by law stamp in the same manner as in the case of an originating notice for like amounts.

**(2)** Where the claim is contested on the proceedings after the order, the same fees must be levied as are now payable on like proceedings in the Supreme Court. R.S., c. 112, s. 41.

**Act does not apply**

**46** This Act does not apply to lands. R.S., c. 112, s. 42.

**Act subject to insolvency laws**

**47** This Act is not intended to interfere with the insolvency laws which may from time to time be in force in this Province, but this Act is intended to be subject to such laws and, subject as aforesaid, to apply to all debtors, whether solvent or not. R.S., c. 112, s. 43.

**Forms**

**48 (1)** The Governor in Council may make regulations prescribing forms for the purpose of this Act.

**(2)** The forms contained in the Schedules to Chapter 112 of the Revised Statutes, 1989, are deemed to be prescribed pursuant to subsection (1) and have been published in accordance with the *Regulations Act* and may be amended or repealed pursuant to this Act.

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

CHAPTER C-75

**An Act Respecting  
the Profits of Criminal Notoriety**

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

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**Short title**

**1** This Act may be cited as the *Criminal Notoriety Act*. 2006, c. 14, s. 1.

**Purpose of Act**

**2** The purpose of this Act is to prevent criminals from financially exploiting the notoriety of their crimes. 2006, c. 14, s. 2.

**Interpretation**

**3 (1)** In this Act,  
“contract for the recollection of a crime” means a contract under which  
(a) a person convicted of, or charged with, a designated crime provides the person’s recollection of the designated crime, either directly or indirectly; and  
(b) consideration is payable to, or at the direction of, the convicted or accused person or the person’s agent;

“convicted” includes a finding that a person was not criminally responsible on account of mental disorder and a finding of guilt in a proceeding under the *Youth Criminal Justice Act* (Canada);

“court” means the Supreme Court of Nova Scotia;

“designated crime” means an act or omission that

(a) is an indictable offence under the *Criminal Code* (Canada) for which the maximum penalty is imprisonment for five years or more and that involves

(i) the use or attempted use of violence against another person, or

(ii) conduct that endangers or is likely to endanger the life or safety of another person or that inflicts or is likely to inflict severe psychological damage on another person;

(b) is an offence or attempt to commit an offence under section 151, 152, 153, 271, 272 or 273 of the *Criminal Code* (Canada);

(c) is an offence under the *Criminal Code* (Canada) that is prescribed by the regulations as a serious property offence; or

(d) is an offence under the criminal law of a jurisdiction outside Canada, if a similar act or omission would be an offence referred to in clause (a), (b) or (c) if it were committed in Canada,

whether the act or omission occurred before or after March 12, 2007;

“Minister” means the Minister of Justice or a person designated by the regulations for the purpose of this Act.

(2) The following persons are deemed to be agents of a person convicted of, or charged with, a designated crime:

(a) a personal representative of the convicted or accused person, including an executor, administrator, committee, trustee or receiver of the person;

(b) a person to whom the convicted or accused person has assigned the convicted or accused person’s rights;

(c) a corporation to which the convicted or accused person has a substantial connection.

(3) In the absence of evidence to the contrary, the following persons are presumed to be agents of the convicted or accused person:

(a) a spouse or common-law partner, or a former spouse or common-law partner, of the convicted or accused person;

(b) a person who is related by birth or adoption to the convicted or accused person. 2006, c. 14, s. 3.

**Application of Sections 5 to 11**

**4** (1) Sections 5 to 11 apply only to a contract for the recollection of a crime

- (a) that was committed in the Province; or
  - (b) that was committed outside the Province, if consideration under the contract is paid or payable to
    - (i) a resident of the Province, or
    - (ii) a person serving a sentence of imprisonment in a penitentiary or other custodial facility located in the Province.
- (2) Sections 5 to 9 do not apply to any contract entered into by
- (a) a law enforcement agency; or
  - (b) a federal, provincial or municipal government or any department or agency of those governments. 2006, c. 14, s. 4.

**Notice of contract**

**5** On request from the Minister, a party to a contract for the recollection of a crime shall, without delay,

- (a) give the Minister, in writing, the names and addresses of all the parties to the contract; and
- (b) give the Minister
  - (i) a copy of the contract, if it is in writing, or
  - (ii) a written summary of all terms of the contract, if it is not in writing. 2006, c. 14, s. 5.

**No payment of consideration**

**6** (1) Except as permitted under this Act, no person shall pay consideration under a contract for the recollection of a crime.

(2) A person who is required under a contract to pay consideration but who is prohibited by subsection (1) from paying it shall, without delay, pay that consideration to the Minister when it becomes payable under the contract. 2006, c. 14, s. 6.

**No acceptance of consideration**

**7** (1) Except when permitted under this Act, no person shall accept consideration under a contract for the recollection of a crime.

(2) A person to whom consideration is payable but who is prohibited by subsection (1) from accepting it shall, without delay, direct the payor to pay it to the Minister. 2006, c. 14, s. 7.

**Application for payment of consideration**

**8 (1)** A party to a contract for the recollection of a crime may apply to the court for an order authorizing consideration paid or payable under the contract to be paid in accordance with the contract.

**(2)** The applicant shall name the Minister as the respondent.

**(3)** An application may not be commenced more than two years after

**(a)** the date on which consideration under the contract was first paid to the Minister under subsection 6(2); or

**(b)** the person was convicted of the designated crime,

whichever is later. 2006, c. 14, s. 8.

**Order**

**9 (1)** The court may make an order directing that some or all of the consideration paid or payable under a contract for the recollection of a crime be paid in accordance with the contract only if the applicant satisfies the court that, after taking into account the importance to society of not allowing criminals to financially exploit the notoriety of their crimes, the value to society of the recollection justifies some or all of the consideration being paid in accordance with the contract.

**(2)** In determining the value to society of the recollection, the court shall take into account

**(a)** the purpose of the recollection;

**(b)** the details of the crime, including the violent or sexual nature of the crime;

**(c)** whether, and to what degree, victims of the crime may suffer further harm from the recollection; and

**(d)** where the recollection has been, or is about to be, made known to the public as a result of the contract,

**(i)** the extent to which the publication, broadcast, public appearance or other means of dissemination deals with the recollection, and

**(ii)** whether the recollection, or the dissemination of it, exploits or sensationalizes the crime.

**(3)** Where the court determines that all, or any part of, future consideration payable under a contract should not be paid in accordance with the contract, the court shall make an order directing that consideration to be paid to the Minister when it becomes payable under the contract. 2006, c. 14, s. 9.

**Application respecting criminal memorabilia**

**10 (1)** Where the Minister is satisfied that a person convicted of, or charged with, a designated crime, or the person's agent, has sold an item

**(a)** used, owned or possessed;

**(b)** autographed; or

(c) made, manufactured or produced,

by the convicted or accused person for a higher price than would have been paid for the item if the person had not been convicted of, or charged with, the designated crime, the Minister may apply to the court for an order requiring the increase in price to be paid to the Minister.

(2) The application must identify the item with sufficient detail to make it readily identifiable.

(3) The Minister shall name the convicted or accused person, or the person's agent, as respondent to the application.

(4) The Minister may not commence an application under this Section more than two years after the day on which the Minister became aware of the sale of an item. 2006, c. 14, s. 10.

#### **Order for payment of increase to Minister**

11 Where the court determines that the item has been sold for a higher price than would have been paid for it if the person had not been convicted of, or charged with, the designated crime, the court shall assess the amount of that increase and order the respondent to pay that amount to the Minister to be dealt with as consideration in accordance with Sections 12 to 15. 2006, c. 14, s. 11.

#### **Consideration held in trust**

12 (1) All consideration the Minister receives under this Act is to be deposited into the Victims' Assistance Fund established under the *Victim Rights and Services Act* to be held in trust by the Minister of Finance and Treasury Board until it is released from trust and further dealt with in accordance with this Act.

(2) Where the Minister is required to pay an amount under Section 13 or pursuant to an order under subsection 9(1), the amount is to be paid or distributed by the Minister of Finance and Treasury Board, on the requisition of the Minister, out of the amounts held in trust under this Section.

(3) Where the consideration under a contract for the recollection of a crime is consideration other than money and the consideration is required to be paid to the Minister under this Act, the person who is required to pay the consideration to the Minister shall pay to the Minister an amount of money equal to the value of that consideration. 2006, c. 14, s. 12.

#### **Return of consideration on acquittal or stay**

13 Where

(a) a person charged with a designated crime has been acquitted and

(i) the time for an appeal has expired without an appeal being commenced, or

(ii) the acquittal has been appealed and the acquittal is confirmed on appeal; or

(b) the charges against a person accused of a designated crime have been stayed,

the Minister shall return the consideration to the person the Minister received it from along with written notice that this Act no longer applies to the designated crime to which the acquittal or stay relates. 2006, c. 14, s. 13.

#### **Consideration may be released and credited to Victims' Assistance Fund**

**14 (1)** Consideration may be released from trust upon written notice to the Minister of Finance and Treasury Board by the Minister if

- (a) the person has been convicted of the crime; and
- (b) in the case of consideration received under Sections 6 to 9 and Section 11,
  - (i) an application has been made under Section 8 and the consideration has not been ordered to be paid in accordance with the contract, or
  - (ii) the time for making an application under Section 8 has expired.

**(2)** Where consideration has been released from trust pursuant to subsection (1), the consideration must be credited to the Victims' Assistance Fund and may be dealt with in accordance with the *Victim Rights and Services Act*. 2006, c. 14, s. 14.

#### **Reasonable costs may be deducted**

**15 (1)** When consideration is credited to the Victims' Assistance Fund under Section 14, the Minister's reasonable costs incurred with respect to that consideration may be deducted from the amount credited.

**(2)** Any amount deducted pursuant to subsection (1) forms part of the General Revenue Fund. 2006, c. 14, s. 15.

#### **Collection of personal information**

**16 (1)** In this Section, "personal information" means personal information as defined in the *Freedom of Information and Protection of Privacy Act*.

- (2)** The Minister may collect personal information
  - (a) to determine whether a proceeding should be commenced under this Act;
  - (b) to conduct a proceeding under this Act;
  - (c) to identify and locate persons who suffered losses compensable under the *Victim Rights and Services Act* in order to compensate such persons pursuant to this Act;
  - (d) to assist the Minister in the performance of duties or the exercise of powers in respect of any property that is or may be the subject of a proceeding under this Act;
  - (e) to enforce an order or comply with an order made under this Act; or

(f) for a purpose related to the operation and administration of this Act that is designated by the regulations.

(3) Personal information may be collected under subsection (2) directly from the individual to whom the information relates or in any other manner.

(4) The Minister shall disclose information collected under subsection (2) to a law enforcement agency or a person engaged in the administration or enforcement of the law if the Minister is of the opinion that the disclosure would assist in the administration or enforcement of the law, would be in the public interest and would not be contrary to the interests of justice.

(5) On the request of the Minister, a person who has knowledge of personal information or other information to which the *Freedom of Information and Protection of Privacy Act* applies and who acquired that knowledge in circumstances prescribed by the regulations shall, notwithstanding those Acts and notwithstanding any confidentiality provision of any other Act, disclose the information to the Minister if the Minister indicates that the disclosure would assist the Minister in the pursuit of any of the purposes set out in subsection (2).

(6) Notwithstanding any confidentiality provision of any Act, a person who has disclosed information under subsection (5) may be required to give evidence related to that information in a proceeding under this Act. 2006, c. 14, s. 16.

#### **Offences and penalties**

17 (1) A person who contravenes Section 5 is guilty of an offence and is liable on summary conviction to a fine of not more than \$10,000.

(2) A person who contravenes Section 6 is guilty of an offence and is liable on summary conviction to a fine of not more than the greater of \$50,000 or the amount of consideration that the person paid in contravention of subsection 6(1) or failed to pay to the Minister as required under subsection 6(2).

(3) The payment of a fine under subsection (2) does not relieve a person of the duty to pay consideration to the Minister under subsection 6(2).

(4) A person who contravenes Section 7 is guilty of an offence and is liable on summary conviction to a fine of not more than the greater of \$50,000 or the amount of consideration accepted in contravention of subsection 7(1) or in respect of which the person failed to make a direction under subsection 7(2). 2006, c. 14, s. 17.

#### **Liability of officers, directors, employees or agents**

18 Where a corporation commits an offence under this Act, any officer, director, employee or agent who directed, authorized, assented to, acquiesced in or participated in the violation of this Act is guilty of the offence and, upon conviction, is liable to the punishment provided for the offence, whether or not the corporation has been prosecuted or convicted. 2006, c. 14, s. 18.

**Limitation period**

**19** A prosecution for an offence under Section 17 may not be commenced more than one year after the day on which evidence sufficient to justify a prosecution came to the knowledge of the Minister. 2006, c. 14, s. 19.

**Court may make additional orders**

**20** Where this Act provides for the making of an order by the court, the court may make any additional or other order that the court considers appropriate or necessary to give effect to the intent of this Act. 2006, c. 14, s. 20.

**No action lies**

**21** No action lies or may be instituted against the Minister, the Crown in right of the Province or any person acting on behalf of, assisting or providing information to either of them under this Act for any act done in good faith and without negligence in the exercise or intended exercise of any authority conferred by this Act. 2006, c. 14, s. 21.

**Regulations**

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

(a) designating a person to act on behalf and in the place of the Minister for the purpose of this Act;

(b) prescribing offences under the *Criminal Code* (Canada) for the purpose of subclause 3(1)(d)(iii);

(c) respecting costs of the Minister that may be deducted under Section 15;

(d) designating a purpose for the collection of information related to the operation and administration of this Act for the purpose of clause 16(2)(f);

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

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

**(2)** The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 2006, c. 14, s. 22.

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CHAPTER C-76

**An Act to Establish a Scheme  
of Crop and Livestock Insurance**

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**Short title**

**1** This Act may be cited as the *Crop and Livestock Insurance Act*. R.S., c. 113, s. 1.

**Interpretation**

**2** In this Act,  
“Commission” means Nova Scotia Crop and Livestock Insurance Commission;  
“contract of insurance” means a contract of insurance under a plan;  
“Fund” means the Crop and Livestock Insurance Fund;  
“insurable crop” means an agricultural product or plant designated as insurable by the regulations;  
“insurable livestock” means any species of livestock or livestock product designated as insurable livestock by the regulations;  
“Minister” means the Minister of Agriculture;  
“plan” means a plan of crop and livestock insurance established by the regulations. R.S., c. 113, s. 2; 2004, c. 24, s. 17.

**Commission**

**3 (1)** A body corporate is constituted and established under the name of the Nova Scotia Crop and Livestock Insurance Commission, to carry out and administer this Act under the direction, supervision and control of the Minister.

(2) The Commission is composed of not fewer than three members appointed by the Governor in Council.

(3) The Governor in Council may designate one of the members of the Commission as Chair and one as Vice-chair.

(4) Each member of the Commission holds office for such term as is prescribed by the member's appointment and is eligible for reappointment.

(5) Three members of the Commission, of whom one must be the Chair or the Vice-chair, constitute a quorum.

(6) Members of the Commission may be paid the necessary expenses incurred by them while engaged in the performance of their official duties and such remuneration as the Governor in Council determines. R.S., c. 113, s. 3.

#### Personnel

4 (1) An Executive Secretary of the Commission and such other officers, clerks and servants as are considered necessary for the proper conduct of the business of the Commission may be appointed under the *Civil Service Act*.

(2) The Executive Secretary of the Commission is the chief administrative officer of the Commission, and the Commission may delegate to the Executive Secretary such of its powers and duties under this Act as it considers advisable.

(3) The Commission may engage persons other than those appointed under subsection (1) to provide professional, technical or other assistance to or on behalf of the Commission. R.S., c. 113, s. 4.

#### Functions and powers

5 It is the function of the Commission and it has power to

(a) administer plans of crop and livestock insurance established by the regulations;

(b) conduct surveys and research programs relating to crop and livestock insurance and to obtain statistics for the purposes of the Commission;

(c) evaluate losses and pay claims under plans of crop and livestock insurance;

(d) enter into agreements with or retain persons for the soliciting and receiving of applications for insurance, the collecting of premiums and the adjusting of claims under plans for and on behalf of the Commission, and the doing of such other things on its behalf as the Commission considers necessary;

(e) reinsure with any other insurer the risk or any portion thereof under its contracts of insurance under any plan;

(f) require an applicant for crop or livestock insurance or an insured person to furnish such information, statements and reports as the Commission requires from time to time;

- (g) provide any form that is necessary to administer an insurance plan;
- (h) subject to clause 6(1)(b), calculate and approve premium rates, unit prices, coverage levels and benefit levels for insurance plans established under the regulations;
- (i) administer this Act and the regulations;
- (j) exercise such powers and perform such duties as are conferred or imposed upon it by or under this or any other Act; and
- (k) perform such other functions and discharge such other duties as are assigned to it from time to time by the Governor in Council. R.S., c. 113, s. 5; 2004, c. 24, s. 18.

### Regulations of Commission

**6 (1)** Subject to the approval of the Governor in Council, the Commission may make regulations establishing, amending and revoking voluntary plans for the insurance within the Province of insurable crops and insurable livestock, governing the terms and conditions of insurance under any plan and, without restricting the generality of the foregoing,

- (a) designating perils for the purpose of any plan;
- (b) respecting the manner in which base premium rates, unit prices, coverage levels and benefit levels for a plan are set by the Commission, including
  - (i) a method for setting premium rates that is approved by an actuary,
  - (ii) coverage levels based on a statistical assessment of risk, and
  - (iii) maximum unit price options and benefit levels based on farmgate values, replacement values or cost of production;
- (c) providing for the payment and collection of premiums in respect of any plan;
- (d) prescribing the contract of insurance form and its use and requiring any information given in a form to be verified by statutory declaration;
- (e) fixing a final date in each year for the receipt of applications for crop or livestock insurance under any plan;
- (f) requiring applicants for crop or livestock insurance and insured persons to furnish such information, statements and reports as are necessary to administer an insurance plan;
- (g) designating insurable persons for the purposes of any plan.

**(2)** A plan may apply to one or more insurable crops and to one or more insurable livestock, and the plan or any provisions thereof may apply to all of the Province or to any area within the Province. R.S., c. 113, s. 6; 2004, c. 24, s. 19.

**Regulations of Governor in Council**

- 7 (1) The Governor in Council may make regulations
- (a) designating any agricultural product or plant as an insurable crop;
  - (b) designating any species of livestock or livestock product as insurable livestock;
  - (c) providing for the arbitration by an arbitrator, or by a board of arbitration, of disputes arising out of the adjustment of losses;
  - (d) providing for the appointment of arbitrators, determining the constitution of boards of arbitration and regulating the practice and procedure of such arbitrators or boards of arbitration;
  - (e) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.

(2) The decision of an arbitrator or a board of arbitration under the regulations is final. R.S., c. 113, s. 7; 2004, c. 24, s. 20.

**Crop and Livestock Insurance Fund**

8 (1) A fund known as the Crop and Livestock Insurance Fund is established, which must be in the custody and control of the Commission on behalf of the Crown in right of the Province.

(2) The Minister of Finance and Treasury Board, with the approval of the Governor in Council and on the written requisition of the Minister, may advance to the Commission, for use as working capital, without legislative authority or appropriation other than this Act, such sums as may be stated in the requisitions.

(3) The Minister of Finance and Treasury Board, on the written requisition of the Minister, shall pay to the Commission in each year the amount determined to be the cost of administering this Act during that year, such payment to be made out of the General Revenue Fund with money authorized by the Legislature or the Governor in Council.

- (4) The Commission shall credit to the Fund
- (a) the money advanced under subsection (2);
  - (b) the money paid under subsection (3);
  - (c) the amount of all premiums received;
  - (d) any amount received from the Government of Canada for the purpose of this Act; and
  - (e) all other amounts received by the Commission for the purpose of this Act.

(5) The Commission shall deposit and keep all amounts credited to the Fund in a chartered bank.

(6) The Commission shall administer the Fund and pay therefrom all amounts required by this Act to be paid therefrom, together with the costs of administering this Act, including, notwithstanding any other Act, the salaries of the Executive Secretary and of all other persons engaged in the administration of this Act.

(7) Where any employees of the Commission are, or become, employees within the meaning of the *Public Service Superannuation Act*, the Commission shall pay from the Fund in respect of those employees the contributions required to be made by the Minister of Finance and Treasury Board under the *Public Service Superannuation Act* and the Commission shall also make, in respect of those employees, the deductions from the salaries required under that Act and remit the amount thereof to the Minister of Finance and Treasury Board who shall pay it into the Fund under that Act.

(8) Notwithstanding any other Act, but subject to subsection (10), the money in the Fund does not form part of the General Revenue Fund, and the Fund is not a division or part of the General Revenue Fund but the money therein is the property of the Crown in right of the Province.

(9) The Commission shall pay to the Minister of Finance and Treasury Board for investment for the Commission any money in the Fund not immediately required for expenditure and the Minister of Finance and Treasury Board may invest the money in securities in which under the *Finance Act* money in the General Revenue Fund may be invested.

(10) Money paid to the Minister of Finance and Treasury Board for investment pursuant to subsection (9) forms a trust or special fund and the interest earnings thereon must be credited to the account of the Commission, and such earnings, either alone or with the principal sum invested for the Commission by the Minister of Finance and Treasury Board hereunder, or any part thereof, must be paid over to the Commission by the Minister of Finance and Treasury Board on the request of the Commission. R.S., c. 113, s. 8; 2004, c. 24, s. 21; 2010, c. 2, s. 96.

#### **Audit**

9 The accounts and financial transactions of the Commission must be audited annually by the Auditor General and a report of the audit must be made to the Commission and to the Minister. R.S., c. 113, s. 9.

#### **Annual report**

10 (1) The Commission shall make an annual report of the affairs of the Commission to the Minister.

(2) The Minister shall submit the annual report to the Governor in Council and shall then lay the report before the House of Assembly if it is in session, or if not, at the next ensuing session. R.S., c. 113, s. 10.

#### **Agreements with Government of Canada**

11 (1) The Minister may, with the approval of the Governor in Council, enter into an agreement with the Government of Canada as provided for in the *Farm Income Protection Act* (Canada).

(2) Notwithstanding anything in this Act, no crop insurance plan may be established unless an agreement made under subsection (1) applies to the plan.

(3) The Minister may, with the approval of the Governor in Council, enter into an agreement with the Government of Canada respecting livestock insurance. R.S., c. 113, s. 11.

**Insurance Act does not apply**

12 The *Insurance Act* does not apply to any matter or thing done by or under this Act. R.S., c. 113, s. 12.

**Source of money for administration**

13 The money required for the purpose of administering this Act must be paid out of the money appropriated therefor by the Legislature. R.S., c. 113, s. 13.

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CHAPTER C-77

**An Act to Facilitate Interjurisdictional Policing in Certain Circumstances**

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**Short title**

- 1 This Act may be cited as the *Cross-border Policing Act*. 2005, c. 4, s. 1.

## PART I

## INTERPRETATION

**Interpretation**

- 2 In this Act,
- “appointing official” means a person designated under Section 35;
- “extra-provincial commander” means
- (a) the commanding officer, director general or commissioner of the provincial police force of another province of Canada, or that person’s designate; or
- (b) the chief of police of a municipal or regional police force from another province of Canada, or the chief’s designate;
- “extra-provincial police officer” means a police officer appointed or employed under the law of another province of Canada, but does not include a member of the Royal Canadian Mounted Police;
- “local commander” means
- (a) the chief officer of a municipal police department;
- (b) the senior officer of any local detachment or other division of the Nova Scotia Provincial Police;

- (c) the senior officer of a local RCMP detachment;
- (d) the commanding officer of a law enforcement body designated by regulation as a Nova Scotia police force; or
- (e) any other person designated as a local commander by regulation;

“local RCMP detachment” means a detachment of the Royal Canadian Mounted Police that is responsible for providing policing services to a specified area of the Province;

“Minister” means the Minister of Justice;

“Nova Scotia police force” means

- (a) a municipal police department in the Province;
- (b) the Nova Scotia Provincial Police; or
- (c) a law enforcement body designated as a Nova Scotia police force by regulation;

“Nova Scotia police officer” means a police officer appointed to, or employed by, a Nova Scotia police force. 2005, c. 4, s. 2.

## PART II

### STANDARD APPOINTMENT PROCEDURE

#### **Appointing official makes appointment**

**3** An appointing official may appoint an extra-provincial police officer as a police officer in the Province for a period of not more than one year in accordance with this Part. 2005, c. 4, s. 3.

#### **Request for appointment**

**4 (1)** An extra-provincial commander may request that a police officer under the commander’s authority be appointed as a police officer in the Province so that the officer has the powers and protections of a police officer while performing police duties in the Province.

- (2) A request must be made in writing to an appointing official.
- (3) A request must include the following information:
  - (a) the name, rank and police force of the officer to be appointed;
  - (b) the duration of the requested appointment;
  - (c) the name, rank, police force and telephone number of the immediate supervisor of the officer to be appointed;
  - (d) a general description of the duties that are to be carried out by the officer in the Province and, in the case of an operation or investigation, the name, full address and date of birth of each person who is a subject of the operation or investigation, if known;
  - (e) where the officer is expected to perform the duties;

(f) an assessment of the risks associated with the officer's duties in the Province, including the possibility of firearms or other weapons being used; and

(g) whether the duties might require a designation to be made under section 25.1 of the *Criminal Code* (Canada) or certification made under subsection 55(2.1) of the *Controlled Drugs and Substances Act* (Canada). 2005, c. 4, s. 4.

#### **Additional information**

**5** An appointing official may ask the extra-provincial commander for any additional information about the request that the appointing official considers necessary, and may deny the request if the information is not provided. 2005, c. 4, s. 5.

#### **Review with affected forces**

**6** Before deciding whether to make the requested appointment, an appointing official shall review the request with the local commander of any Nova Scotia police force or local RCMP detachment that the appointing official believes would be affected if the appointment were made. 2005, c. 4, s. 6.

#### **Deadline for decision**

**7** Within seven days after receiving a request, an appointing official shall either make the requested appointment or advise the extra-provincial commander, in writing, that the request has been denied. 2005, c. 4, s. 7.

#### **Appointment**

**8 (1)** An appointing official may make the requested appointment if the official is of the opinion that it is appropriate in the circumstances.

**(2)** An appointment must be made in a form approved by the Minister.

**(3)** An appointing official may impose conditions on an appointment, which conditions must be set out on the appointment form. 2005, c. 4, s. 8.

#### **Provision of appointment form**

**9** As soon as reasonably possible, but no later than five days after making an appointment, the appointing official shall provide a copy of the appointment form to the appointee and the appointee's extra-provincial commander. 2005, c. 4, s. 9.

#### **When appointment effective**

**10** An appointment is not effective until the appointee receives a copy of the appointment form from the appointing official. 2005, c. 4, s. 10.

#### **Notice to Minister**

**11 (1)** As soon as reasonably possible, but no later than five days after making an appointment, the appointing official shall provide the Minister with written notice of the appointment.

- (2) The notice must contain the following information:
- (a) the name and rank of the appointee and the name and address of the appointee's police force;
  - (b) the duration of the appointment; and
  - (c) the reason for the appointment. 2005, c. 4, s. 11.

### PART III

#### APPOINTMENT IN URGENT CIRCUMSTANCES

##### **Local commander makes appointment**

**12** A local commander may appoint an extra-provincial police officer as a police officer in the Province for a period of not more than 72 hours in accordance with this Part. 2005, c. 4, s. 12.

##### **Request for appointment**

**13 (1)** An extra-provincial police officer may request appointment as a police officer in the Province if the officer

(a) wishes to have the powers and protections of a police officer while participating in an operation or investigation in the Province; and

(b) believes that the operation or investigation could be compromised by the delay that would result from requiring the request to be made under Part II.

(2) Where it is impractical for the extra-provincial police officer to make the request, the officer's immediate supervisor may request the appointment on behalf of the officer.

(3) A request must be made to the local commander of the Nova Scotia police force or local RCMP detachment providing policing services in the area where the investigation or operation is expected to be conducted and may be made orally or in writing.

(4) A request must include the information required under subsection 4(3) and an explanation of how the operation or investigation could be compromised by the delay that would result from requiring the request to be made under Part II. 2005, c. 4, s. 13.

##### **Additional information**

**14** A local commander may ask an extra-provincial police officer and the officer's immediate supervisor for any additional information about the request that the local commander considers necessary, and may deny the request if the information is not provided. 2005, c. 4, s. 14.

##### **Deadline for decision**

**15** As soon as reasonably possible, but not later than 24 hours after receiving a request, a local commander shall either make the requested appointment or advise the requesting officer that the request has been denied. 2005, c. 4, s. 15.

**Appointment**

**16 (1)** A local commander may make the requested appointment if the local commander is of the opinion that

(a) it is appropriate in the circumstances for the appointment to be made; and

(b) the delay that would result from requiring a request to be made under Part II could compromise the operation or investigation.

**(2)** An appointment must be made in a form approved by the Minister.

**(3)** The local commander may impose conditions on the appointment, which conditions must be set out on the appointment form. 2005, c. 4, s. 16.

**Provision of appointment form**

**17** As soon as reasonably possible after making an appointment, the local commander shall provide a copy of the appointment form to the appointee. 2005, c. 4, s. 17.

**When appointment effective**

**18** Subject to Section 19, an appointment is not effective until the appointee receives a copy of the appointment form from the appointing official. 2005, c. 4, s. 18.

**Where impractical to provide form**

**19 (1)** A local commander who is of the opinion that it is impractical to provide the appointee with a copy of the appointment form before the appointee requires the powers and protections of a police officer in the Province may make the appointment effective immediately by

(a) indicating on the appointment form

(i) that the appointment is effective immediately, and

(ii) the time when the appointment is made; and

(b) giving oral confirmation of the appointment to the appointee, including the times when the appointment is effective and expires, and any conditions imposed on it.

**(2)** Where a request for appointment was made under subsection 13(2), oral confirmation of the appointment may be given to the appointee's immediate supervisor. 2005, c. 4, s. 19.

**Notice to appointing official**

**20** Within three days after making an appointment under Section 12, the local commander shall provide an appointing official with a copy of the appointment form and all information provided to the commander in support of the request for the appointment. 2005, c. 4, s. 20.

**Notice to commander and Minister**

**21** As soon as reasonably possible after receiving a copy of the appointment form under Section 20, the appointing official shall

- (a) provide the appointee's extra-provincial commander with a copy of the appointment form; and
- (b) provide the Minister with written notice of the appointment that meets the requirements of subsection 11(2). 2005, c. 4, s. 21.

**Renewal**

**22 (1)** At the request of the appointee or the appointee's immediate supervisor, the local commander may renew an appointment made under this Part for a period of not more than 72 hours if

- (a) a request for an appointment under Part II has been made in respect of the appointee; and
- (b) a decision to approve or deny that request has not been made.

**(2)** Sections 13 to 21 apply to the renewal of an appointment made under this Part, with necessary changes.

**(3)** An appointment made under this Part may be renewed more than once, as long as the conditions in subsection (1) are satisfied. 2005, c. 4, s. 22.

## PART IV

## APPOINTEE'S DUTIES AND STATUS

**Advance notice to local commander**

**23 (1)** Before performing any police duties in an area of the Province, an appointee shall give notice to the local commander of the Nova Scotia police force or local RCMP detachment that provides policing services to that area, unless the duties are of a routine nature that are unlikely to affect the policing services provided by the force or detachment.

**(2)** The notice referred to in subsection (1) must include a general description of the duties that are to be carried out by the appointee and all conditions imposed on the appointment.

**(3)** Where it is impractical for the appointee to give notice to the local commander before performing duties in the area, the appointee shall do so as soon as practical after starting to perform the duties. 2005, c. 4, s. 23.

**Appointee to comply with direction**

**24** An appointee shall comply with any direction from a local commander respecting how the appointee is to perform duties while in the area in which the commander's force or detachment provides policing services. 2005, c. 4, s. 24.

**Early termination of appointment**

**25 (1)** An appointing official may terminate an appointment before it expires if the appointing official is of the opinion that

- (a) the appointee has failed to
  - (i) comply with this Act,
  - (ii) comply with a condition imposed on the appointment, or
  - (iii) act in a professional manner at any time while in the Province; or

- (b) it is no longer appropriate in the circumstances for the appointee to have the powers and protections of a police officer in the Province.

**(2)** An appointing official shall provide written notice of termination of an appointment to

- (a) the appointee;
- (b) the appointee's extra-provincial commander; and
- (c) the Minister.

**(3)** An appointment is terminated when the appointee receives a copy of the notice of termination.

**(4)** Where an appointing official terminates an appointment pursuant to clause (1)(a), the appointing official shall notify the Attorney General or Minister of Justice for the province of Canada in which the appointee is employed or appointed as a police officer of the termination of the appointment and the reason for the termination.

**(5)** Where it is impractical for an appointing official to give notice of termination of an appointment to the appointee pursuant to clause (2)(a), the appointing official may advise the appointee's extra-provincial commander that it is impractical and may provide that notice to the appointee's extra-provincial commander and, notwithstanding subsection (3), the appointment is terminated when the appointee's extra-provincial commander advises the appointee that the appointment is terminated. 2005, c. 4, s. 25.

**Surrender of appointment**

**26 (1)** An appointee who ceases to require the powers and protections of a police officer in the Province before the appointee's appointment expires shall surrender the appointment by written notice to an appointing official.

**(2)** The appointing official who receives written notice of surrender of an appointment shall provide the Minister with a copy of the notice. 2005, c. 4, s. 26.

**Powers and protections of officer**

27 While an appointment is in effect, the appointee has, throughout the Province, all the powers and protections that a Nova Scotia police officer has under the *Police Act*, subject to any conditions imposed on the appointment. 2005, c. 4, s. 27.

## PART V

OVERSIGHT OF NOVA SCOTIA POLICE OFFICERS  
IN OTHER JURISDICTIONS**Application of Part**

28 This Part applies to a Nova Scotia police officer who has been appointed as a police officer or peace officer in another province of Canada. 2005, c. 4, s. 28.

**Nova Scotia officer to co-operate**

29 Where an investigation, hearing or inquest is held under authority of a statute in another province of Canada to examine

(a) the conduct of a Nova Scotia police officer who was appointed as a police officer or peace officer in the other jurisdiction; or

(b) the operation or investigation that led the officer to be appointed as a police officer or peace officer in the other jurisdiction,

the officer shall co-operate with an investigator and appear before any inquest or hearing, subject to the rights and privileges that a police officer from the other jurisdiction would have in the same situation. 2005, c. 4, s. 29.

**Disclosure of documents**

30 Where a Nova Scotia police officer is involved in an investigation, hearing or inquest referred to in Section 29, the Nova Scotia police force of which the officer is a member shall disclose and provide to the investigator, inquest or hearing any relevant documents in its possession, subject to any rights and privileges that a police force from that other jurisdiction would have in the same situation. 2005, c. 4, s. 30.

**Police Act applies**

31 A Nova Scotia police officer who has been appointed as a police officer or peace officer in another province of Canada is subject to investigation and discipline in the Province under the *Police Act* with respect to the officer's conduct in the other jurisdiction, as if the conduct took place in the Province, even if an investigation, hearing or inquest referred to in Section 29 has been held in the other jurisdiction. 2005, c. 4, s. 31.

**Inadmissible statements and evidence**

32 No statement or evidence given by a Nova Scotia police officer in an investigation, hearing or inquest referred to in Section 29 is admissible without the officer's consent in

(a) an investigation or hearing of a complaint under the *Police Act*; or

(b) internal disciplinary proceedings conducted by the officer's Nova Scotia police force. 2005, c. 4, s. 32.

## PART VI

### INDEMNIFICATION

#### **Nova Scotia police force to indemnify**

**33** Subject to an agreement under clause 34(a), a Nova Scotia police force shall indemnify a police force from another province of Canada against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred in respect of a civil, criminal or administrative action or proceeding if

(a) the police force from that other jurisdiction is a party to the action or proceeding; and

(b) the action or proceeding arises out of the actions of a member of the Nova Scotia police force while the member was appointed as a police officer or peace officer in that other jurisdiction. 2005, c. 4, s. 33.

#### **Indemnity agreement**

**34** A Nova Scotia police force may enter into an agreement regarding indemnification for costs arising out of

(a) the appointment of a Nova Scotia police officer as a police officer or peace officer in another province of Canada;

(b) the appointment of an extra-provincial police officer as a police officer in the Province. 2005, c. 4, s. 34.

## PART VII

### GENERAL

#### **Designation of appointing officials**

**35** The Minister may designate a local commander to act as an appointing official. 2005, c. 4, s. 35.

#### **Local commander may delegate powers**

**36** A local commander may delegate the commander's powers under this Act to a police officer under the commander's authority. 2005, c. 4, s. 36.

#### **Law of hot pursuit not affected**

**37** Nothing in this Act affects the common law regarding hot pursuit. 2005, c. 4, s. 37.

#### **Powers of appointment preserved**

**38** Nothing in this Act limits or affects the power to appoint peace officers or special constables under another Act. 2005, c. 4, s. 38.

**Regulations**

- 39** (1) The Governor in Council may make regulations
- (a) designating a person as a local commander for the purpose of clause (e) in the definition of “local commander” in Section 2;
  - (b) designating a law enforcement body as a Nova Scotia police force for the purpose of clause (c) in the definition of “Nova Scotia police force” in Section 2;
  - (c) defining any word or expression used but not defined in this Act;
  - (d) respecting any matter or thing the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*, 2005, c. 4, s. 39.

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CHAPTER C-78

**An Act Respecting Crown Lands**

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

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**Short title**

1 This Act may be cited as the *Crown Lands Act*. R.S., c. 114, s. 1.

**Purpose**

2 The purpose of this Act is to

(a) provide the legislative and regulatory framework that will ensure Crown lands are sustainably used, protected, and managed to maintain and enhance biodiversity and considers climate change and for purposes that include wilderness conservation, recreation, economic opportunity in forestry, tourism and other sectors, community development, and for the cultural, social and aesthetic enjoyment of Nova Scotians;

(b) require that forestry leasing and licensing on Crown lands provide equitable stumpage rates, provide adequate investments in forest improvements and establish an overall preference for timber produced on privately owned land; and

(c) support the range of purposes set forth in clauses (a) and (b) through land-use planning for Crown lands. 2021, c. 9, s. 1.

**Interpretation**

3 In this Act,

“conservation officer” means a conservation officer appointed pursuant to this Act, the *Forests Act* or the *Wildlife Act*;

“Crown” means the Crown in right of the Province;

“Crown lands” means all or any part of land under the administration and control of the Minister;

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

“Director of Surveys” means the Director of Surveys appointed pursuant to this Act;

“forest” means a plant association consisting predominantly of trees;

“forest access road” means a road or part of a road to the fullest extent of the right-of-way of such road, including bridges, shoulders and ditches, but does not include a public highway or public road or a bridge thereon;

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

“grant”, when used as a verb, means the transfer of an interest in Crown lands and, when used as a noun, means the initial transfer of Crown lands from the Crown to a person;

“lease” means a lease of Crown lands made pursuant to this Act or any special or general enactment, or a lease of Crown lands in force on May 29, 1987, and made pursuant to Chapter 163 of the Revised Statutes, 1967;

“lessee” means the holder of a lease;

“licence” means a licence in respect of Crown lands given pursuant to this Act or any special or general enactment, or a licence of Crown lands in force on May 29, 1987, and made pursuant to Chapter 163 of the Revised Statutes, 1967;

“licensee” means a holder of a licence;

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

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

“structure” includes a building, camp, trailer, houseboat, raft, wharf, fence or wall;

“stumpage” means the amount, as determined by the Minister, that is payable to the Crown for timber harvested on Crown lands;

“timber” means all trees of any species or size whether standing, fallen, cut or harvested;

“vehicle” means any vehicle propelled or driven otherwise than by muscular power, whether or not the vehicle is registered pursuant to the *Motor Vehicle Act*, and includes a motor boat or motor vessel;

“wildlife” means any species of vertebrate that is wild by nature and hence not normally dependent on humans to directly provide its food, shelter or water;

“wood-processing facility” means a mill in which timber is manufactured into secondary wood products;

“woods” means forest land, rock barren, brushland, dry marsh, bog and muskeg. R.S., c. 114, s. 3; 2012, c. 6, s. 2.

#### **Supervision and management of Act**

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

**(2)** The Minister may from time to time designate persons to act on behalf of the Minister.

**(3)** The Minister, in all matters pertaining to Crown lands, has and shall exercise all the powers, rights, duties, authority and privileges that previous to March 19, 1926, were had or exercised by the Commissioner of Crown Lands and the Commissioner of Forests and Game.

**(4)** The authority and responsibility of the Minister to administer and control Crown lands exists even though the land may be subject to a lease, licence, easement or encumbrance. R.S., c. 114, s. 4.

#### **Powers of Minister**

**5** The Minister has supervision, direction and control of

**(a)** the acquisition, registration, survey and sale or disposition of Crown lands; and

- (b) the administration, utilization, protection and management of Crown lands, including
- (i) access to and travel on Crown lands,
  - (ii) habitats for the maintenance and protection of wildlife on Crown lands,
  - (iii) harvesting and the renewal of timber resources on Crown lands,
  - (iv) forest recreation on Crown lands, and
  - (v) matters that may be assigned pursuant to this Act and the regulations,

but not including land owned or claimed by the Province specifically under the jurisdiction of another member of the Executive Council or a department, branch or agency of the Government other than the Department. R.S., c. 114, s. 5.

### Personnel

**6** (1) Conservation officers and other persons required for the administration of this Act and the regulations must be appointed in accordance with the *Civil Service Act*.

(2) Notwithstanding subsection (1), the Minister may engage, upon such terms and conditions as the Minister considers fit, the services of such persons as the Minister considers necessary for the efficient carrying out of the intent and purpose of this Act and the regulations.

(3) All conservation officers appointed pursuant to the *Wildlife Act* or the *Forests Act* are conservation officers for the purposes of this Act.

(4) A member of the Royal Canadian Mounted Police is, by virtue of office, a conservation officer pursuant to this Act and has the same powers as are conferred upon a conservation officer.

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

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

(7) A conservation officer may administer oaths by any person making a declaration or affidavit pursuant to this Act.

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

(9) Subsection (8) does not apply to members of the Royal Canadian Mounted Police or conservation officers who have already taken and subscribed an oath of office.

(10) A copy of an identification card signed by the Minister is proof in any court of law that the individual named therein is a conservation officer pursuant to this Act or the regulations, without any further proof. R.S., c. 114, s. 6.

#### **Dealing with land**

7 With the approval of the Governor in Council, the Minister may

- (a) acquire by purchase or gift any land or interest in land;
- (b) acquire by lease or licence any land or interest in land;
- (c) exchange Crown lands for privately owned land;
- (d) acquire an easement or right-of-way across privately owned land. R.S., c. 114, s. 7.

#### **Transfer of administration**

8 (1) With the approval of the Governor in Council, the Minister may accept the transfer of the administration and control of land from the Government of Canada or an agency thereof.

(2) The Minister may by letter accept the transfer of the administration and control of land administered by another Provincial government department. R.S., c. 114, s. 8.

#### **Title to land acquired**

9 All land acquired pursuant to this Act is vested in the Crown and is deemed to be Crown lands under the administration and control of the Minister. R.S., c. 114, s. 9.

#### **Registrar of Crown Lands**

10 (1) The Minister may designate a person in the Department to be Registrar of Crown Lands for the purpose of this Act.

(2) The Registrar shall maintain such land-record facilities as are considered necessary to store and record all land-related documents involving Crown lands and such other land as is directed by the Governor in Council.

(3) The Registrar is responsible for coordinating and consolidating information relating to that land identified in subsection (2). R.S., c. 114, s. 10.

#### **Records, plans and maps**

11 (1) The Minister shall keep on file in the Department records and plans showing the location of Crown lands and such other land and boundaries thereof as are directed by the Governor in Council.

(2) The Minister is not liable for the accuracy of information represented on maps prepared by the Department that present graphic indexes of the location of Crown lands and other land that has been granted or otherwise conveyed by the Crown. R.S., c. 114, s. 11.

**Boundary surveys of Crown lands**

**12 (1)** The Minister shall ensure that the boundaries of Crown lands are surveyed and kept maintained.

**(2)** The Minister may designate a person in the Department to be Director of Surveys for the purpose of this Act.

**(3)** All boundary surveys of Crown lands must comply with the *Land Surveyors Act* and regulations made thereto. R.S., c. 114, s. 12.

**Surveys involving Crown land boundaries**

**13 (1)** No person shall survey a boundary of Crown lands without first obtaining an order of survey from the Director of Surveys.

**(2)** No person shall survey any boundaries touching or bordering Crown lands without first advising the Director of Surveys.

**(3)** Upon completion of a boundary survey involving Crown lands, the surveyor shall, where prepared, submit a return of survey and a legible copy of field notes to the Director of Surveys.

**(4)** No changes in any records or plans on file with the Department may be made on the basis of a return of survey until such return is approved by the Director of Surveys. R.S., c. 114, s. 13.

**Destruction or defacing boundary line or marker**

**14 (1)** No person shall destroy or deface any boundary line or any part thereof or remove, move or destroy any monument, pin, post or other marker placed on Crown lands to establish a boundary of Crown lands.

**(2)** In a prosecution with respect to an offence pursuant to this Section, any monument, pin, post or other marker alleged to have been placed on Crown lands is, in the absence of evidence to the contrary, deemed to have been placed on Crown lands for the purpose of establishing a boundary thereon. R.S., c. 114, s. 14.

**Manner of dealing with Crown lands**

**15** Crown lands may not be granted, conveyed, sold or disposed of in any manner except as provided by this Act. R.S., c. 114, s. 15.

**Powers of Minister respecting land**

**16 (1)** With the approval of the Governor in Council, the Minister may

(a) issue a grant, deed, lease, licence or other conveyance for the disposition of Crown lands or any interest in Crown lands;

(b) grant an easement or right-of-way with respect to Crown lands upon such terms and conditions as the Minister considers appropriate;

(c) transfer the administration and control of Crown lands to the Government of Canada or an agency thereof.

(2) The Minister may by letter transfer the administration and control of Crown lands administered by the Department to another Provincial government department. R.S., c. 114, s. 16.

#### **Petitions for Crown lands**

17 (1) All petitions for Crown lands must be entered in a petition book, the original of which is kept on permanent file in the Department.

(2) All entries in the petition book must be made in the order in which they are received.

(3) The entry must specify the name of the applicant, the date of the application and such other details as the Minister considers expedient.

(4) The Minister may prescribe a fee to be submitted with a petition. R.S., c. 114, s. 17.

#### **Method of conveyance**

18 (1) Title to any Crown lands that have not already been granted may be conveyed by means of a grant.

(2) All grants must be signed by the Lieutenant Governor and the Minister and a second original must be kept on permanent file in the Department.

(3) A copy of the grant and plan must be forwarded to the registrar of deeds for the registration district where the land is situate.

(4) The registrar of deeds shall, without fee or charge, register the instrument in compliance with the *Registry of Deeds Act* or the *Land Registration Act*.

(5) All grants signed or purported to be signed by the Lieutenant Governor and the Minister that bear their respective seals may be registered without proof of execution. R.S., c. 114, s. 18.

#### **Execution by Minister and registration**

19 (1) Where the Minister, with the approval of the Governor in Council, conveys title to Crown lands, the Minister shall sign the instrument or document and affix the seal of the office of the Minister.

(2) All documents signed or purported to be signed by the Minister that bear the seal of the office of the Minister may be registered by the registrar of deeds for the registration district where the land is situate without proof of execution. R.S., c. 114, s. 19.

#### **Reserved Crown lands**

20 (1) A person may apply to the Minister to construct a forest access road on Crown lands that have been reserved for such purposes.

(2) Where Crown lands have been reserved for a road or for another purpose and are not used for that purpose or provide a hindrance to the

development of the area, the Minister, with the approval of the Governor in Council, may convey all or a portion of the land so reserved to such persons on such terms and conditions as the Minister considers appropriate. R.S., c. 114, s. 20.

**Powers of Minister respecting conditional conveyances**

**21 (1)** Where a grant, deed or other conveyance affecting Crown lands issued pursuant to this Act or any previous Act contains a condition that the land is to be used in a particular manner, the Minister may

- (a) declare the grant, deed or other conveyance null and void if the land is being used in violation of the condition;
- (b) with the approval of the Governor in Council, order the release of all or part of the land from a condition; or
- (c) upon the payment of the prescribed fee, extend the time for the performance of a condition.

**(2)** Where the Minister makes a declaration pursuant to clause (1)(a), the land reverts to the Crown.

**(3)** A copy of a declaration, order or extension made pursuant to subsection (1) must be forwarded to the registrar of deeds for the registration district where the land is situate.

**(4)** Any structure or personal property remaining on Crown lands after the revocation, cancellation or termination of a grant, deed or other conveyance is the property of the Crown and may be disposed of in the manner the Minister considers expedient. R.S., c. 114, s. 21.

**Rectification of or order vacating conveyance**

**22 (1)** The Minister may issue a grant or deed of rectification where a grant, deed or other conveyance of Crown lands contains a clerical error, a misnomer or a wrong or defective description or plan of the land.

**(2)** A grant or deed of rectification relates back to the original grant or deed with respect to which it is made and has effect as if it were issued on the date of the issue of that grant or deed and has the effect of correcting with necessary modifications every instrument made by the grantee or any person claiming through or under the grantee prior to the date of the corrected document.

**(3)** The Minister, with the approval of the Governor in Council, may by order vacate a grant, deed or other conveyance of Crown lands in whole or in part that was issued as a result of fraud or misrepresentation or is manifestly in derogation of the public interest and thereupon the land reverts to the Crown as if the grant, deed or other conveyance had not been made, subject to the rights of bona fide purchasers for value or a person whose title is derived therefrom.

**(4)** A copy of a grant or deed of rectification or an order vacating a grant, deed or other conveyance of Crown lands must be forwarded to the registrar of deeds for the registration district where the land is situate. R.S., c. 114, s. 22.

**Agreements by Minister**

**23** The Minister may, for the more effective management of Crown lands, enter into an agreement with the Government of Canada or an agency thereof, with a provincial government or an agency thereof or with a person for any purpose related to this Act or the regulations. R.S., c. 114, s. 23.

**Special areas**

**24** The Minister may set aside special areas on Crown lands for

- (a) the maintenance and management of the forests in conformity with the *Forests Act* and the *Forest Enhancement Act*;
- (b) the conduct of forest research;
- (c) the protection and regulation of the flow of water within the lands so reserved and set apart;
- (d) the development of water power to be derived therefrom;
- (e) the protection, management and conservation of wildlife and wildlife habitats;
- (f) such purposes as the Minister considers expedient. R.S., c. 114, s. 24.

**Management by Minister**

**25 (1)** The Minister shall manage wildlife and wildlife habitats on Crown lands and provide for the maintenance of long-term productivity, diversity and stability of the forest ecosystem.

**(2)** The Minister shall integrate appropriate protective measures in forest-management planning for Crown lands to respect the integrity of water-supply watersheds, wildlife habitats, special places, ecological reserves and significant outdoor-recreation opportunities. R.S., c. 114, s. 25.

**Forest access roads**

**26 (1)** The Minister may construct and maintain or acquire any forest access road the Minister considers necessary for the administration of this Act and the regulations.

**(2)** The Minister may issue a permit to construct and use a forest access road across Crown lands for such period of time as set out in the regulations or as ordered by the Minister.

**(3)** The Minister is not liable for damage, loss or injury to a user arising in relation to the construction, repair, maintenance or lack of maintenance of a forest access road.

**(4)** The Minister may close a forest access road or any portion thereof to travel by a class of vehicle or by a person or class of persons for all or any part of the year.

**(5)** A forest access road may be closed pursuant to subsection (4) by the erection of a sign or barricade or such other manner as the Minister considers expedient.

(6) The Minister may grant a permit to travel on a forest access road that is closed subject to such terms and conditions as the Minister considers advisable.

(7) No person shall, without lawful authority,

(a) travel on a forest access road or portion thereof that is closed;

(b) remove or deface a sign or barricade erected pursuant to this Act; or

(c) barricade or post signs on a forest access road.

(8) In a prosecution pursuant to subsection (7), where a sign or barricade is posted or erected on a forest access road indicating that the forest access road or a portion of it is closed, it is prima facie deemed to have been posted or erected by the Minister. R.S., c. 114, s. 26.

#### **Rights and obligations respecting forest access roads**

27 (1) Any person, including those who hold a licence, permit, lease or other form of agreement with the Crown, may, with consent of the Minister,

(a) construct a forest access road and works necessarily incidental thereto;

(b) restrict travel over a forest access road;

(c) abandon a forest access road and works necessarily incidental thereto;

(d) require users of the forest access road to obtain a permit;

(e) restrict the use of a forest access road to the public by the use of gates or by notice if material damage might result from such use or if such use might endanger life or property;

(f) remove, at the expense of the owner thereof, a vehicle or equipment unlawfully found on or using the forest access road.

(2) The Minister is not liable for damage, loss or injury arising from the construction, repair or maintenance or lack thereof of a forest access road constructed by a person referred to in subsection (1).

(3) The Minister may enter into an agreement with a person who constructs a forest access road to open it to travel by the public generally or by a class thereof as may be agreed upon and such agreement may provide that the cost of constructing, reconstructing or maintaining the forest access road be shared in the proportions agreed upon.

(4) Where a forest access road built pursuant to this Section is abandoned, the person who constructed the road shall rehabilitate the area affected to a degree satisfactory to the Minister unless the Minister agrees to assume the responsibility for the forest access road and works necessarily incidental thereto. R.S., c. 114, s. 27.

**Conditions for disposal of resources**

**28** Timber and other resources on Crown lands may be disposed by means of

- (a) a permit;
- (b) a licence;
- (c) a forest utilization licence agreement; or
- (d) such means as the Minister considers appropriate. R.S., c. 114, s. 28.

**Cutting or removing resources prohibited**

**29 (1)** No person shall cut or remove timber or other resources on or from Crown lands unless that person is expressly authorized to do so pursuant to this Act or the regulations.

**(2)** In addition to a penalty imposed for a violation of subsection (1), the court may order a person convicted of an offence pursuant to this Section to restore the land to a condition as near as practicable as it was before the offence was committed and pay an amount equal to twice the market value of the property cut, damaged or removed. R.S., c. 114, s. 29.

**Fuelwood cutting area**

**30 (1)** The Minister may designate an area of Crown lands as a fuelwood cutting area or as an area for a use the Minister considers appropriate.

**(2)** The Minister may issue a permit to remove timber and other resources from an area designated pursuant to subsection (1) provided they are to be used for domestic purposes and not for resale.

**(3)** No permit issued pursuant to this Section may be for a period in excess of one year or renewed for a longer period than 12 months at any one time. R.S., c. 114, s. 30.

**Sale of resources**

**31 (1)** The Minister may offer timber or other resources from Crown lands for sale by tender, public auction or other means upon such terms as the Minister considers expedient.

**(2)** Subsequent to a sale pursuant to subsection (1), the Minister may issue a licence upon such terms and conditions as the Minister considers appropriate.

**(3)** No licence issued pursuant to this Section may be granted for a longer period than two years or renewed for a longer period than 12 months at any one time. R.S., c. 114, s. 31.

**Forest utilization licence agreements**

**32 (1)** The Minister, with the approval of the Governor in Council, may enter into a forest-utilization licence agreement for the purpose of ensuring the best possible utilization of the forests of the Province and the timber thereon with a

person who owns or operates a wood-processing facility in the Province or who undertakes by agreement with the Minister to construct and operate a wood-processing facility in the Province.

(2) When entering into an agreement pursuant to subsection (1), the Minister shall consider whether

(a) the availability of primary forest products from Crown lands will unfairly influence the marketability of such products from privately owned lands; and

(b) the agreement will unfairly limit access to other primary forest products, including hardwood, on Crown land.

(3) An agreement pursuant to subsection (1) may include provisions for sublicensing and must contain such terms and conditions as are considered necessary by the Minister and, subject to subsection (4), may not be for a period longer than 20 years.

(4) An agreement pursuant to subsection (1) may provide that in every 10th year of the agreement it may be extended, with or without change or amendments to the terms and conditions under which it was granted, for 10 years so that the term of the agreement after each extension is 20 years.

(5) Unless provided otherwise, an agreement renewed pursuant to subsection (4) is a continuation of the agreement originally issued and the agreement renewed continues and is deemed to have continued without interruption from the renewed date of the original agreement. R.S., c. 114, s. 32; 2012, c. 6, s. 3.

### **Rights conferred**

**33** (1) A permit, licence or licence agreement issued pursuant to this Act does not confer on the holder thereof an exclusive right to the Crown lands involved except such rights as are necessary to cut or remove the timber or other resources to which the permit, licence or licence agreement applies.

(2) Where a permit, licence or licence agreement is found to comprise timber or other resources included in an earlier permit, licence or licence agreement, the later permit, licence or licence agreement is void in so far as it conflicts with the earlier permit, licence or licence agreement and the person holding the later permit, licence or licence agreement has no claim against the Minister for indemnity or compensation by reason thereof.

(3) Subject to the payment of stumpage or other charges, property rights in the timber or other resources set out in the permit, licence or licence agreement vest in the holder thereof at the time the timber or other resources are cut or removed.

(4) Notwithstanding subsection (3), where timber or other resources are removed from Crown lands or are damaged or destroyed by a person without lawful authority, the permit holder or licensee affected, as against such person and any other person except the Crown, is and is deemed to be the owner of the timber or other resources and in possession of the Crown lands affected for the purpose of maintaining an action with respect to such product. R.S., c. 114, s. 33.

**Maintaining records**

**34 (1)** Every permit holder or licensee shall keep such records as are required by the Minister and such records must be open at all times to the inspection of the Minister or an auditor acting on behalf of the Crown.

**(2)** A person who fails to furnish such records or fails or neglects to comply with the terms and conditions of a permit, licence or licence agreement is guilty of an offence. R.S., c. 114, s. 34.

**Payment and collection of charges**

**35 (1)** A person who harvests or takes possession of timber or other resources on Crown lands under a permit, licence or licence agreement shall pay to the Crown stumpage or such other charges as may be determined by the Minister.

**(2)** Where stumpage or a charge is due and unpaid to the Crown by a person, interest at a rate determined by the Minister must be paid by that person on the amount due and payable from time to time.

**(3)** Unpaid stumpage, charges or interest is a lien or charge upon timber cut or other resources removed by the permit holder or licensee under the authority of a permit, licence or licence agreement and upon a product manufactured from such timber or other resources in preference and priority to any and all fees, charges or claims in favour of another person whether arising before or after a lien or charge arises pursuant to this Section.

**(4)** A lien or charge arising pursuant to subsection (3) does not require registration or filing and attaches to any processed wood or other product into which the timber or other resources that are subject to the lien or charge may be converted.

**(5)** Where the timber or other resources or products into which they may be processed are sold under any order of foreclosure, sale or execution or under a legal process otherwise than by the Crown to satisfy its lien or charge, the amount of the lien or charge created pursuant to subsection (3) constitutes a first lien or charge on the proceeds of the sale and title thereof does not pass to the purchaser until the lien or charge is satisfied.

**(6)** Where a permit holder or licensee is in default under a term of the permit, licence or licence agreement issued pursuant to this Act, the Minister shall give to the permit holder or licensee then in default written notice to make payment of the amount in default and if the permit holder or licensee fails to pay the amount of stumpage, charges or interest then due, a conservation officer with a search warrant may search for, seize or impound timber or other resources or products into which they may have been processed to satisfy the stumpage, charges or interest then outstanding.

**(7)** Where a product has been seized pursuant to subsection (6) and no claim to recover it has been made within 30 days from the date of seizure and the stumpage, charges or interest has not been paid, the timber or other resources or product into which it may have been processed is forfeited to and becomes the property of the Crown and may be sold or disposed of in any manner which the Minister considers expedient.

(8) The balance of the proceeds of any sale pursuant to subsection (7), after retaining all amounts due to the Crown must be paid to the person entitled thereto or, in the case of a dispute as to whom the money is to be paid, it must be paid into a court of competent jurisdiction and the court's decision with respect to payment is final. R.S., c. 114, s. 35.

### Scaling standards

36 Where forest products harvested on Crown lands are required to be scaled, they must be scaled in accordance with the *Scalers Act* and regulations made pursuant to that Act. R.S., c. 114, s. 36.

### Certificate

37 (1) Where it appears to the Minister that a person, known or unknown, has acquired rights or claim by possession in or to Crown lands and the Minister so reports to the Executive Council, the Governor in Council may authorize and direct the Minister to issue a certificate to the effect that the Crown asserts no interest or claim to the land and upon the issuance of the certificate all interest or claim of the Crown to the land described therein ceases.

(2) A certificate pursuant to this Section purporting to bear the signature and seal of the Minister must be registered in the registry of deeds for the registration district in which the land therein described is situate without proof of the signature. R.S., c. 114, s. 37.

### Offences

38 (1) A person who without legal justification or without the permission of the Minister or a person authorized by the Minister, the proof of which rests upon the person asserting justification or permission,

(a) enters upon Crown lands where entry is prohibited by notice;

(b) engages in an activity that is prohibited on the Crown lands by notice; or

(c) dumps or deposits materials on or over Crown lands or causes, suffers or permits material to be dumped or deposited on or over Crown lands,

is guilty of an offence.

(2) A notice pursuant to this Section may be given orally, in writing or by sign.

(3) Where the notice is by means of a sign, the sign must be posted so that it is clearly visible in daylight under normal conditions from the approach to each usual point of access to the Crown lands to which it applies.

(4) A notice pursuant to this Section may be given in respect of part of the Crown lands.

(5) A person who, without legal justification, removes a sign or notice posted on Crown lands is guilty of an offence.

(6) In addition to a penalty imposed pursuant to subsection (1), the court may order a person convicted of an offence pursuant to this Section to restore the land to a condition as nearly as practicable as it was before the offence was committed. R.S., c. 114, s. 38.

#### Removal of structure

**39** (1) Where a structure is on Crown lands in respect of which there is not in effect a lease or permit issued pursuant to this Act or a structure is placed on Crown lands by a person who is not the holder of a lease or permit issued pursuant to this Act, the Minister may, by written notice, require the person who erected or occupies or uses the structure to remove it from Crown lands within 60 days after service of the notice upon that person.

(2) A notice given pursuant to subsection (1) may be served upon the person to whom it is directed by delivering it to that person personally or, where that person cannot conveniently be served personally, by leaving it at that person's last or most usual place of residence with a person who is apparently not under 16 years of age.

(3) Where the identity of a person to whom a notice may be directed pursuant to subsection (1) is unknown to the Minister, the Minister may cause notice requiring the removal of the structure to be posted in a conspicuous place on the structure.

(4) A person upon whom a notice pursuant to subsection (1) has been served pursuant to this Section who fails to remove the structure from Crown lands within 60 days of service is guilty of an offence.

(5) Where a notice pursuant to subsection (1) has been served or posted and the structure has not been removed from Crown lands within 60 days of the service or posting, the Minister or any person acting by or under the Minister's authority may remove the structure, together with the contents contained therein or demolish the structure in any manner that the Minister considers expedient and the costs and expenses of the removal or demolition may be recovered by the Minister in a court of competent jurisdiction in any action for debt on behalf of the Crown against any person who erected, occupied or used the structure. R.S., c. 114, s. 39.

#### Offences

**40** (1) Except as authorized pursuant to this or any other Act or by the Minister, a person who

(a) cuts down or damages timber or other resources belonging to the Crown;

(b) removes from Crown lands timber or other resources of the Crown; or

(c) damages or removes property of the Crown,

is guilty of an offence.

(2) In addition to a penalty imposed for a violation of subsection (1), the court may order a person convicted of an offence pursuant to this Section to restore the land to a condition as near as practicable as it was before the offence was

committed and pay an amount equal to twice the market value of the timber or other resources cut, damaged or removed. R.S., c. 114, s. 40.

#### **Arrest**

**41** A conservation officer may arrest without a warrant a person whom the conservation officer

- (a) finds committing an offence contrary to this Act or the regulations; or
- (b) believes on reasonable and probable grounds is committing or has recently committed an offence contrary to this Act or the regulations. R.S., c. 114, s. 41.

#### **Entry not trespass**

**42 (1)** A conservation officer in the discharge of the conservation officer's duties and a person accompanying the conservation officer may enter upon and pass through privately owned land without being liable for trespass.

**(2)** A person entering upon privately owned land pursuant to subsection (1) is only liable for actual damages caused by such entry. R.S., c. 114, s. 42.

#### **Prohibition**

**43** No person shall

- (a) obstruct;
- (b) cause another person to obstruct;
- (c) incite another person to obstruct; or
- (d) assault,

a conservation officer in the exercise of authority pursuant to this Act or the regulations or a person assisting the conservation officer in the exercise of that authority. R.S., c. 114, s. 43.

#### **Search**

**44** A conservation officer who has reasonable and probable grounds to believe there has been a violation of this Act or the regulations may

- (a) without a search warrant, stop, enter and search a vehicle, railway car or aircraft; or
- (b) with a search warrant, search a residence or structure. R.S., c. 114, s. 44.

#### **Seizure**

**45 (1)** A conservation officer appointed pursuant to this Act may seize anything, including a vehicle, that the conservation officer believes on reasonable and probable grounds may afford evidence of an offence pursuant to this Act or the regulations.

**(2)** Where timber or any other resources on Crown lands that have been cut down or removed without authority are found mixed with timber or other resources

- (a) other than from Crown lands; or
- (b) authorized to be harvested on Crown lands,

a conservation officer may, with a search warrant, seize any or all such timber or resources.

(3) Where a conservation officer has seized timber or other resources in accordance with this Section, the conservation officer shall

- (a) without delay, report the particulars of the seizure to the Department; and
- (b) where the conservation officer has knowledge of the person who was in actual or apparent possession of the timber or other resources at the time of the seizure, give notice to that person of the seizure, either by personal service or by registered mail.

(4) Timber or any other resources seized by a conservation officer pursuant to this Section that is not otherwise property of the Crown becomes property of the Crown by the seizure and may be disposed of as the Minister considers appropriate. R.S., c. 114, s. 45.

#### **Prima facie proof and copies as evidence**

46 (1) In a prosecution or proceeding pursuant to this Act or the regulations in which proof is required with respect to

- (a) the issuance, cancellation, suspension or reinstatement of a permit, licence or licence agreement;
- (b) the identity of the person who is the permit holder or the licensee named in the permit;
- (c) the delivery, serving or mailing of a document or notice to be given by the Minister;
- (d) the receipt of a required return by the Department;
- (e) a previous conviction of a person pursuant to this Act or the regulations,

a certificate purporting to be signed by the Minister or the Registrar certifying with respect to the same is prima facie proof of the facts stated in the certificate and of the authority of the person who has signed the certificate without further proof of appointment or signature.

(2) A copy of a record, document, book or paper belonging to or deposited with the Department attested under the signature of the Minister or the Registrar is evidence in all cases in which the original record, document, book or paper could be evidence.

(3) In a prosecution or proceeding pursuant to this Act or the regulations, a plan or copy of a plan of land certified by the Minister or the Registrar to be a correct copy, according to the records of the Department, is receivable in evidence without proof of the signature of the person certifying the same and the designation of land on such plan as Crown lands or words to this effect is prima facie proof that the land so designated is land belonging to the Crown. R.S., c. 114, s. 46.

**Civil action prohibited**

**47** No action in trespass or nuisance may be brought against the Crown or its agents for the doing of any act or the carrying out of any operation necessarily incidental to the exercise of a duty or power pursuant to the Act or the regulations except where such trespass or nuisance results in actual injury to the person or actual damage to property. R.S., c. 114, s. 47.

**Liability**

**48 (1)** Where

- (a) a person removes timber or other resources from Crown lands;
- (b) the removal is not authorized by a permit, licence or licence agreement; and
- (c) timber or other resources are not recovered or recoverable by the Department,

the person in charge of the cutting or removal operation and the person for whom the cutting or removal operation is being conducted are jointly and severally liable for damages in an amount equal to twice the market value of the unrecovered timber or other products.

**(2)** Subsection (1) does not apply to a person who is ordered to make payment pursuant to subsection 29(2) or 40(2). R.S., c. 114, s. 48.

**Summary Proceedings Act**

**49** The *Summary Proceedings Act* and forms authorized thereunder apply to all prosecutions and proceedings pursuant to this Act and the regulations as far as they are applicable and are not inconsistent with this Act and the regulations. R.S., c. 114, s. 49.

**Action by Crown**

**50** Where pursuant to this Act or an enactment, a notice relating to Crown lands is required to be given or an act to be done by or on behalf of the Crown, such notice may be given and act done by or by the authority of the Minister. R.S., c. 114, s. 50.

**Regulations**

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

- (a) respecting the oath or affirmation of office for conservation officers;
- (b) respecting the acquisition of lands;
- (c) respecting the registration of Crown lands;
- (d) respecting the survey of Crown lands;
- (e) respecting leasing and other dispositions of Crown lands;
- (f) respecting the harvesting and removal of timber and other resources from Crown lands;

- (g) respecting special areas set aside on Crown lands;
- (h) respecting forest access roads on Crown lands;
- (i) respecting permits, licences and forest utilization licence agreements on Crown lands;
- (j) respecting forest management on Crown lands;
- (k) respecting claims to Crown lands;
- (l) respecting information returns to be completed with respect to Crown lands;
- (m) respecting stumpage and other charges for timber and other resources removed from Crown lands;
- (n) respecting the posting and use of signs on Crown lands;
- (o) respecting the conduct of public auctions and sales pursuant to the Act;
- (p) prescribing minimum and maximum fines to be paid for violations of the regulations;
- (q) defining any word or expression used in this Act or the regulations and not defined therein;
- (r) respecting procedures and forms to be used;
- (s) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.

**(2)** The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. R.S., c. 114, s. 51.