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OF
NOVA SCOTIA
2023

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THE GOVERNOR IN COUNCIL BY PROCLAMATION

VOLUME I



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VOLUME I

Revised Statutes of Nova Scotia

2023

Chapter		Page
I-1	Imitation Dairy Products Act	3738
I-2	Importation of Hydraulic Fracturing Wastewater Prohibition Act	3740
I-3	Income Tax Act	3742
I-4	Indian Lands Act	3857
I-5	Industrial Loan Act	3863
I-6	Industry Closing Act	3867
I-7	Insurance Act	3869
I-8	Insurance Premiums Tax Act	4035
I-9	Insured Prescription Drug Plan Act	4040
I-10	Intercountry Adoption Act	4056
I-11	Interest on Judgments Act	4068
I-12	Interim Residential Rental Increase Cap Act	4070
I-13	Interior Designers Act	4072
I-14	Interjurisdictional Support Orders Act	4087
I-15	International Child Abduction Act	4113
I-16	International Commercial Arbitration Act	4123
I-17	International Interests in Mobile Aircraft Equipment Act	4142
I-18	International Sale of Goods Act	4183
I-19	International Trusts Act	4205
I-20	International Wills Act	4211
I-21	Interpretation Act	4219
I-22	Interprovincial Subpoena Act	4233
I-23	Intestate Succession Act	4237
I-24	Intimate Images and Cyber-protection Act	4241
I-25	Invest Nova Scotia Act	4249
I-26	Involuntary Psychiatric Treatment Act	4259

CHAPTER I-1

**An Act Respecting
Imitation Dairy Products**

Table of Contents

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

	Section
Short title.....	1
Interpretation.....	2
Restricted manufacture or sale.....	3
Inspectors.....	4
Powers of inspector.....	5
Obstruction of inspector prohibited.....	6
Regulations.....	7
Offence and penalty.....	8

Short title

1 This Act may be cited as the *Imitation Dairy Products Act*. R.S., c. 216, s. 1.

Interpretation

2 In this Act,

“dairy product” means milk, cream, butter, cheese, condensed milk, evaporated milk, milk powder, dry milk, ice cream, malted milk, sherbet or any other product manufactured wholly or mainly from milk;

“imitation dairy product” means any food substance for human consumption that is an imitation of a dairy product, a substitute for a dairy product or is represented to be for the same use as a dairy product and that is manufactured wholly or in part from any fat or oil other than that of milk, and includes any product intended for use as a dessert topping or as a coffee whitener and such other products that are designated as imitation dairy products in the regulations, but does not include margarine as defined in the *Margarine Act* or peanut butter;

“inspector” means an inspector appointed under this Act. R.S., c. 216, s. 2.

Restricted manufacture or sale

3 Subject to the regulations, no person shall manufacture, sell, offer for sale or possess for sale any imitation dairy product. R.S., c. 216, s. 3.

Inspectors

4 The Minister of Agriculture may appoint inspectors for the purpose of this Act. R.S., c. 216, s. 4.

Powers of inspector

5 An inspector may at all reasonable times, for the purpose of enforcing this Act or of ascertaining whether or not it is being complied with,

(a) enter and examine any place, premises, warehouse, factory, store, boat, ship, car, truck or vehicle that is being used for the storage, manufacture, sale or carriage of an imitation dairy product or is believed by the inspector to be so used;

(b) require to be produced for inspection and make copies of or extracts from any books, shipping bills, bills of lading, records of sale, manufacturing or shipping and other records or papers relating to an imitation dairy product or believed by the inspector to relate to an imitation dairy product;

(c) detain any imitation dairy product for the time necessary to complete an inspection and, at the expense of the owner, manufacturer, wholesaler, retailer or transporter, take samples of an imitation dairy product whenever or wherever the inspector considers it necessary. R.S., c. 216, s. 5.

Obstruction of inspector prohibited

6 No person shall obstruct an inspector in the exercise of the inspector's functions under this Act or refuse to produce any books, records or papers for inspection by an inspector when the inspector so requires. R.S., c. 216, s. 6.

Regulations

7 The Governor in Council may make regulations

(a) designating products as imitation dairy products;

(b) designating classes of imitation dairy products;

(c) permitting the manufacture and sale of an imitation dairy product or a class of imitation dairy products;

(d) prescribing standards of quality for imitation dairy products;

(e) prescribing the records to be kept by manufacturers and sellers of any imitation dairy product;

(f) respecting any other matter necessary or advisable for carrying out effectively the intent and purpose of this Act. R.S., c. 216, s. 7; 1998, c. 8, s. 43.

Offence and penalty

8 Any person who violates any of the provisions of this Act or the regulations is guilty of an offence and is liable, on summary conviction, for a first offence to a penalty of not more than \$100 and in default of payment to imprisonment for not more than 30 days, and for a second or subsequent offence to a penalty of not less than \$50 nor more than \$500 and in default of payment to imprisonment for not more than 30 days. R.S., c. 216, s. 8.

CHAPTER I-2

**An Act to Ban the Importation
of Hydraulic Fracturing Wastewater**

Table of Contents

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

	Section
Short title.....	1
Interpretation.....	2
Act prevails.....	3
Offence.....	4
Penalty.....	5
Regulations.....	6

Short title

1 This Act may be cited as the *Importation of Hydraulic Fracturing Wastewater Prohibition Act*. 2013, c. 36, s. 1.

Interpretation

2 In this Act,

“hydraulic fracturing” means the transmission of a carrier fluid to apply pressure and transport proppants to an underground geologic formation to create or enhance subsurface fractures and facilitate the release of any petroleum or natural gas, but does not include fracturing for the production of wells for potable water;

“hydraulic fracturing wastewater” means any water used in or produced from hydraulic fracturing or other geologic formation stimulation, and includes produced or formation water resulting from wells that have been hydraulically fractured;

“produced or formation water” means water produced as a by-product from petroleum or natural gas production wells during the extraction of petroleum or natural gas and includes, without limiting the generality of the foregoing, brine, salts, metals and petroleum compounds. 2013, c. 36, s. 2.

Act prevails

3 Where there is a conflict between this Act and any other enactment, this Act prevails. 2013, c. 36, s. 3.

Offence

4 No person shall

(a) import into the Province hydraulic fracturing wastewater from outside the Province; or

2 importation of hydraulic fracturing wastewater prohibition c. I-2

(b) transport hydraulic fracturing wastewater into the Province.
2013, c. 36, s. 4.

Penalty

5 (1) A person who contravenes this Act or the regulations is guilty of an offence and liable on summary conviction to a fine of not more than \$10,000.

(2) Where an offence under this Act is committed or continued on more than one day, the person who committed the offence is liable to be convicted for a separate offence for each day on which the offence is committed. 2013, c. 36, s. 5.

Regulations

6 (1) The Governor in Council may make regulations 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*. 2013, c. 36, s. 6.

CHAPTER I-3

An Act Respecting Income Tax

Table of Contents

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

	Section
Short title.....	1
PART I — Interpretation and Exemptions	
Interpretation.....	2
Application of federal provisions.....	3
Exemptions.....	4
PART II — Income Tax	
Division A — Liability for Tax	
Liability of individual	5
Liability of corporation.....	6
Division B — Computation of Tax for Individuals	
Subdivision a — Computation of Tax	
Interpretation of Division.....	7
Tax payable by individual.....	8
Deficit.....	9
Subdivision b — Adjustments to Tax	
Adjustments	10
Subdivision c — Tax Credits, Rebates and Other Deductions	
Spousal, age and child deductions prior to 2018	11
Calculation of deductions for taxation years 2007 to 2017	12
Basic personal amount	13
Spousal amount	14
Dependant amount	15
Caregiver amount.....	16
Infirm dependant amount.....	17
Age amount.....	18
Pension amount.....	19
Amount for young children.....	20
Charitable gifts deductions.....	21
Medical expense credit.....	22
Child sport and recreational activity tax credit for taxation years 2009 to 2014	23
Naturopath or designated medical professional tax credit.....	24
Impairment credit.....	25
Calculation of impairment credit for taxation years 2007 to 2010	26
Tuition credit.....	27
Education credit	28
Unused tuition and education tax credits.....	29
Credit for interest on student loan.....	30
Graduate tax credit.....	31
Credit for EI premium and CPP.....	32
Transfer of credits	33
Income not earned in Province.....	34
Deduction for taxable dividends	35

Deduction for employment out of Canada.....	36
Regulations	37
Subdivision d — Restrictions on Credits and Other Rules	
Part-year residents	38
Ordering of credits	39
Credits in separate returns	40
Tax payable by non-resident	41
Credits in year of bankruptcy	42
Tax payable by inter vivos trust	43
Where individual bankrupt	44
Subdivision e — Other Taxes Payable	
Tax on split income.....	45
Minimum tax	46
Subdivision f — Multi-jurisdictional and Non-resident Individuals	
Where income earned outside Province	47
Restriction on tax credits where out-of-Province income	48
Subdivision g — Surtax	
Surtax payable	49
Subdivision h — Foreign Tax Deduction	
Foreign tax deduction	50
Subdivision i — Low Income Tax Reduction	
Low income deduction	51
Regulations	52
Subdivision j — Nova Scotia Post-secondary Graduate Tax Credit	
Post-secondary graduate tax credit for 2007 and 2008 graduates	53
Subdivision k — Nova Scotia Post-secondary Graduate Retention Rebate	
Post-secondary graduate retention rebate for 2009 to 2013 graduates	54
Subdivision l — Age Tax Credit for Low Income Seniors	
Age tax credit.....	55
Subdivision m — Equity Tax Credits	
Equity tax credit.....	56
Innovation equity tax credit.....	57
Venture capital tax credit	58
Labour-sponsored venture-capital tax credit	59
Subdivision n — Volunteer Firefighter and Volunteer Ground Search and Rescue Worker Tax Credit	
Volunteer firefighter and ground search and rescue tax credit	60
Subdivision o — Fertility and Surrogacy Tax Credit	
Fertility and surrogacy tax credit.....	61
Subdivision p — Children’s Sports and Arts Tax Credit	
Children’s sports and arts tax credit	62

Subdivision q — Capital Gains Refund to Mutual Fund Trust	
Capital gains refund to mutual fund trust.....	63
Division C — Computation of Tax for Corporations	
Subdivision a — Computation of Tax	
Tax payable by corporation.....	64
Subdivision b — Research and Development Tax Credit	
Research and development tax credit.....	65
Subdivision c — Nova Scotia Corporate Tax Holiday	
Corporate tax holiday.....	66
Subdivision d — Foreign Tax Deduction	
Foreign tax deduction.....	67
Subdivision e — Capital Gains Refund to Mutual Fund Corporation	
Capital gains refund to mutual fund corporation.....	68
Subdivision f — ISO9000 Certification	
Tax credit for ISO9000 certification expenditure prior to 2001.....	69
Subdivision g — Prospectus Filing Expenses	
Tax credit for prospectus filing expenses prior to 2000.....	70
Subdivision h — Film Industry Tax Credit	
Film industry tax credit prior to July 1, 2015.....	71
Subdivision i — Computer-assisted Labour Incentives	
Digital media tax credit.....	72
Digital animation tax credit.....	73
Subdivision j — ISO14000 Certification	
ISO14000 certification expenditure prior to 2001.....	74
Subdivision k — Manufacturing and Processing Investment Tax Credit	
Manufacturing and processing investment tax credit prior to 2010.....	75
Subdivision l — Capital Investment Tax Credit	
Capital investment tax credit.....	76
Division D — Deductions Available to All Taxpayers	
Political Contributions	
Political contributions.....	77
Food Bank Tax Credit for Farmers	
Food bank tax credit for farmers.....	78

Division E — Returns, Assessments, Payment and Appeals

Returns, estimate of tax and assessment	79
Reassessment while collection agreement in effect	80
Payment of tax by farmers and fish harvesters and by other individuals	81
Payment of tax by corporation	82
Application of Federal Act provisions	83
Refund	84
Where collection agreement	85
Penalties	86
Failure to report, false statements and omissions	87
Penalty for late or deficient instalments	88
Refunds	89
Objections	90

Division F — Appeals to Supreme Court of Nova Scotia

Appeals	91
Reply of Minister	92
Appeal deemed action in Court	93
Irregularities, extension of time and disposal of appeal	94
Practice and procedure	95

PART III — Financial Institutions Capital Tax

Interpretation of Part	96
Application of Part	97
Liability to pay tax	98
Regulations	99
Partial year	100

PART IV — Administration and Enforcement

Administration

Application of Federal Act administration provisions	101
Regulations	102
Anti-avoidance rules	103
Restriction on issuance of tax-credit certificate	104

Enforcement

Application of Federal Act collection provisions	105
Application of certain Federal Act provisions	106
Warrant to recover amount payable	107
Acquisition of debtor's property	108
Payment of money seized from tax debtor	109
Seizure of chattels	110
Taxpayer leaving Canada	111
Withholding taxes	112
Liability of directors for failure to deduct	113
Application of general provisions	114
Application of certain Federal Act provisions	115
Violation of regulations under Federal Act	116

Offences

Failure to file	117
Offences	118
Where collection agreement	119
Revealing confidential information	120
Officers, etc., of corporations	121
Power to decrease punishment	122

Procedure and Evidence

Procedure and evidence	123
------------------------------	-----

c. I-3	income tax	5
Tax avoidance.....		124
	PART V — Collection of Tax	
	Division A — Collection Agreement	
Ratification of Collection Agreement.....		125
	Payments on Account	
Application of tax payment.....		126
	Deductions at Source	
Restriction on application of tax payment.....		127
Restriction on application of tax payment.....		128
	Division B — Non-agreeing Provinces	
Non-agreeing provinces		129
	Division C — Reciprocal Enforcement of Judgments	
Regulations.....		130
	PART VI — Offshore Area	
No payment by corporation for offshore area profits.....		131

Short title

1 This Act may be cited as the *Income Tax Act*. R.S., c. 217, s. 1.

PART I — INTERPRETATION AND EXEMPTIONS

Interpretation

2 (1) In this Act,

“agreeing province” means a province of Canada that has entered into an agreement with the Government of Canada under which the Government of Canada will collect taxes payable under that province’s income tax statute and will make payments to that province in respect of the taxes so collected;

“collection agreement” means the agreement referred to in subsection 125(1), as amended in accordance with subsection 125(2), or the new collection agreement referred to in subsection 125(2), as amended in accordance with subsection 125(2);

“Commissioner of Revenue” means the Commissioner of Revenue appointed under section 25 of the *Canada Revenue Agency Act*;

“Court” means the Supreme Court of Nova Scotia;

“Department of Finance” means

(a) when no collection agreement is in effect, the Department of Finance and Treasury Board of the Province; and

- (b) when a collection agreement is in effect,
 - (i) in relation to the remittance of an amount as or on account of tax payable under this Act, the Receiver General of Canada, and
 - (ii) in relation to any other matter, the Canada Revenue Agency;

“deputy head” means

- (a) when no collection agreement is in effect, the Deputy Minister of Finance and Treasury Board of the Province or permanent head of that portion of the public service of the Province administered by the Minister of Finance and Treasury Board; or

- (b) when a collection agreement is in effect, the Commissioner of Revenue;

“Federal Act” means the *Income Tax Act* (Canada);

“Federal ITAR” means the *Income Tax Application Rules* (Canada);

“Federal Regulations” means the regulations, as amended from time to time, made pursuant to the Federal Act;

“income tax statute” means, with reference to an agreeing province, the law of that province that imposes a tax similar to the tax imposed under this Act;

“Minister” means the Minister of National Revenue for Canada, but in any provision of the Federal Act that applies for the purpose of this Act, a reference to the Minister is to be read and construed for the purpose of this Act as a reference to the Minister of Finance;

“Minister of Finance” means

- (a) when no collection agreement is in effect, the Minister of Finance and Treasury Board for the Province; and

- (b) when a collection agreement is in effect,
 - (i) in relation to the remittance of an amount as or on account of tax payable under this Act, the Receiver General of Canada, and

- (ii) in relation to any other matter, the Minister of National Revenue for Canada;

“permanent establishment”, where used for a purpose under this Act, has the same meaning as that assigned for that purpose, or the purpose that is most similar to that purpose, in the Federal Act or the Federal Regulations;

“prescribed” means

- (a) in the case of a form, the information to be given on a form or the manner of filing a form, authorized by

the Minister or the Minister of Finance and Treasury Board for the Province;

(b) in the case of the manner of making or filing an election, authorized by the Minister or the Minister of Finance and Treasury Board for the Province;

(c) in the case where “prescribed” is mentioned in a provision of the Federal Act that applies for the purpose of this Act otherwise than in respect of a case to which clause (a) or (b) applies, what is prescribed, within the meaning assigned by subsection 248(1) of the Federal Act, in the Federal Regulations under that provision; and

(d) in any other case where the word is mentioned in this Act, prescribed by regulations;

“Receiver General of Canada” means the Receiver General of Canada, but in any provision of the Federal Act that applies for the purpose of this Act, a reference to the Receiver General of Canada is to be read and construed for the purpose of this Act as a reference to the Minister of Finance;

“registrar” means prothonotary;

“regulations” means a regulation made by the Governor in Council under this Act;

“taxation year” of a person means the period determined under the Federal Act as the person’s taxation year.

(2) “last day of the taxation year” is, in the case of an individual who resided in Canada at any time in the taxation year but ceased to reside in Canada before the last day thereof, deemed to be a reference to the last day in the taxation year on which the individual resided in Canada.

(3) The tax payable by a taxpayer under this Act or under Part I of the Federal Act means the tax payable by the taxpayer as fixed by assessment or reassessment subject to variation on objection or on appeal, if any, in accordance with this Act, or Part I of the Federal Act, as the case may be.

(4) For the purpose of this Act, except where they are at variance with the definitions contained in this Section, the definitions and interpretations contained in, or made by regulations under, the Federal Act apply.

(5) In any case of doubt, the provisions of this Act must be applied and interpreted in a manner consistent with similar provisions of the Federal Act.

(6) Any reference in any enactment other than this Act to Chapter 3 of the Acts of 1961, the *Individual and Corporation Income Tax Act*, is to be read and construed as a reference to this Act.

(7) Subsections 104(1) and (2), subsection 248(11) and Section 257 of the Federal Act apply for the purpose of this Act.

(8) Where a provision, in this subsection referred to as “that section”, of the Federal Act or the Federal Regulations is made applicable for the pur-

pose of this Act, that section, as amended from time to time, applies with such modifications as the circumstances require for the purpose of this Act as though it had been enacted as a provision of this Act, and in applying that section for the purpose of this Act, in addition to any other modifications required by the circumstances,

(a) a reference in that section to tax pursuant to Part I of the Federal Act is to be read as a reference to tax pursuant to this Act;

(b) except for the purpose of Part III of this Act, where that section contains a reference to tax pursuant to any of Parts I.1 to XIV of the Federal Act, that section is to be read without reference therein to tax pursuant to any of those Parts and without reference to any portion of that section that applies only to or in respect of tax pursuant to any of those Parts;

(c) a reference in that section to a particular provision of the Federal Act that is the same as, or similar to, a provision of this Act is to be read as a reference to the provision of this Act;

(d) any reference in that section to a particular provision of the Federal Act that applies for the purpose of this Act is to be read as a reference to the particular provision as it applies for the purpose of this Act;

(e) except for the purpose of Part III of this Act, where that section contains a reference to any of Parts I.1 to XIV of the Federal Act or to a provision in any of those Parts, that section is to be read without reference therein to that Part or without reference to that provision, as the case may be, and without reference to any portion of that section that applies only because of the application of any of those Parts or the application of a provision in any of those Parts;

(f) where that section contains a reference to the *Bankruptcy and Insolvency Act* (Canada), that section is to be read without reference therein to the *Bankruptcy and Insolvency Act* (Canada);

(g) subject to clause (h), any reference in that section to the Federal Regulations is to be read as including a reference to this Act or a regulation made under this Act;

(h) a reference in that section to “under this Act or under an Act of a province with which the Minister of Finance has entered into an agreement for the collection of taxes payable to the province under that Act” is to be read as a reference to “under this Act”;

(i) any reference in that section to the Federal Act or the Federal Regulations is to be read as including a reference to this Act or a regulation made under this Act;

(j) any reference in that section to a word or expression set out in the left-hand column of the following Table is to be read as a reference to the word or expression set out opposite thereto in the right-hand column of the Table:

TABLE

His Majesty	His Majesty in right of the Province
Canada	Nova Scotia
<i>Criminal Code</i>	<i>Summary Proceedings Act</i>
Receiver General	Minister of Finance and Treasury Board
Canada Customs and Revenue Agency	Department of Finance and Treasury Board
Commissioner of Customs and Revenue	Deputy Head
Deputy Attorney General of Canada	Deputy Attorney General of Nova Scotia
Tax Court of Canada	Supreme Court of Nova Scotia
<i>Tax Court of Canada Act</i>	<i>Judicature Act</i>
Federal Court of Canada	Supreme Court of Nova Scotia
<i>Federal Court Act</i>	<i>Judicature Act</i>
Registrar of the Tax Court of Canada	Prothonotary of the Supreme Court of Nova Scotia
Registry of the Federal Court	Office of the Supreme Court of Nova Scotia

2000, c. 4, s. 61; 2014, c. 34, s. 12.

Application of federal provisions

3 (1) In this Section,

“federal amendment” means an amendment to a federal provision;

“federal application rule” means a provision, in this clause referred to as “the provision”, of an Act of the Parliament of Canada that makes a federal provision, a federal amendment or the repeal of a federal provision or federal amendment apply

- (a) in respect of specified taxation years;
- (b) in respect of specified fiscal periods;
- (c) before or after a specified time;
- (d) in respect of transactions or events that occur before or after a specified time or in specified taxation years or specified fiscal periods; or
- (e) in respect of such other criteria as may be set out in the provision;

“federal provision” means a provision of the Federal Act that applies for the purpose of this Act.

(2) Where a federal application rule governs the application of a federal provision or federal amendment, for the purpose of applying the federal provision or federal amendment for the purpose of this Act, the federal provision or federal amendment must be applied in accordance with the federal application rule as though the Legislature had enacted that federal application rule to govern the application of the federal provision or federal amendment for the purpose of this Act.

(3) Where a federal provision or a federal amendment comes into force, or is deemed to come into force, at a particular time, and no federal application rule governs its application, the federal provision or federal amendment, as the case may be, is deemed, for the purpose of applying it for the purpose of this Act, to come into force at that particular time.

(4) Where a federal provision is repealed and another provision is not substituted therefor, the federal provision ceases to apply for the purpose of this Act

(a) where the repeal is governed by a federal application rule, in accordance with that federal application rule; and

(b) where the repeal is not governed by a federal application rule, at the time the repeal comes into force or is deemed to come into force.

(5) For the purpose of this Act, where a particular federal provision is replaced by another federal provision, or is repealed and another federal provision is substituted therefor, the other federal provision is deemed to be a continuation of the particular federal provision and the replacing or the repeal and substitution, as the case may be, is deemed to be an amendment to the particular federal provision. 2000, c. 4, s. 61.

Exemptions

4 No tax is payable under this Act by a person for a period when

(a) no tax is payable under Part I of the Federal Act for the period on the person's taxable income because of subsection 149(1) of the Federal Act; or

(b) that person was a non-resident-owned investment corporation. 2000, c. 4, s. 61.

PART II — INCOME TAX

DIVISION A — LIABILITY FOR TAX

Liability of individual

5 An income tax must be paid as hereinafter required for each taxation year by every individual

(a) who was resident in the Province on the last day of the taxation year; or

(b) who, not being resident in the Province on the last day of the taxation year, had income earned in the taxation year in the Province, as

defined in the definition of “income earned in the taxation year in the Province” in Section 7. 2000, c. 4, s. 61.

Liability of corporation

6 An income tax must be paid as hereinafter required for each taxation year by every corporation that maintained a permanent establishment in the Province at any time in the year. 2000, c. 4, s. 61.

DIVISION B — COMPUTATION OF TAX FOR INDIVIDUALS

Subdivision a — Computation of Tax

Interpretation of Division

7 In this Division,

“appropriate percentage” for a taxation year means the lowest percentage referred to in Section 8 that is applicable in determining tax payable under this Part for the year;

“highest percentage” for a taxation year means the highest percentage referred to in Section 8 that is applicable in determining tax payable under this Part for the year;

“income earned in the taxation year in the Province” means income earned in the year in the Province as determined in accordance with Federal Regulations made for the purpose of the definition “income earned in the year in a province” in subsection 120(4) of the Federal Act;

“income earned in the taxation year outside the Province” means income for the year minus income earned in the taxation year in the Province;

“income for the year” means

(a) in the case of an individual resident in Canada during only part of the taxation year in respect of whom section 114 of the Federal Act applies or in the case of an individual not resident in Canada at any time in the taxation year, the individual’s income for the year as computed under subsection 120(3) of the Federal Act; and

(b) in the case of any other individual, the individual’s income for the year as determined in accordance with, and for the purposes of, the Federal Act;

“provincial percentage” for a taxation year means 57.5%;

“tax payable under the Federal Act” by an individual in respect of a taxation year means the amount determined under the definition “tax otherwise payable under this Part” in subsection 120(4) of the Federal Act in respect of the individual for the year. 2000, c. 4, s. 61.

Tax payable by individual

8 The tax payable under this Part for a taxation year by an individual on the individual’s taxable income or taxable income earned in Canada, as the case may be, in this Division referred to as the “amount taxable”, is

- (a) 8.79% of the amount taxable if the amount taxable does not exceed \$29,590;
- (b) \$2,601 plus 14.95% of the amount by which the amount taxable exceeds \$29,590 if the amount taxable exceeds \$29,590 and does not exceed \$59,180;
- (c) \$7,025 plus 16.67% of the amount by which the amount taxable exceeds \$59,180 and does not exceed \$93,000; and
- (d) for taxation years
 - (i) before 2010, and after the taxation year immediately preceding the taxation year determined by subsection 9(2), \$12,662 plus 17.5% of the amount by which the amount taxable exceeds \$93,000,
 - (ii) after 2009, and before the taxation year determined by subsection 9(2),
 - (A) \$12,662 plus 17.5% of the amount by which the amount taxable exceeds \$93,000 and does not exceed \$150,000, and
 - (B) \$22,637 plus 21.0% of the amount by which the amount taxable exceeds \$150,000. 2000, c. 4, s. 61; 2003, c. 4, s. 15; 2004, c. 3, s. 26; 2010, c. 3, s. 2.

Deficit**9**

- (1) In this Section,
 - “deficit” means the amount in a fiscal year by which the total of
 - (a) net program expenses, net debt servicing costs and pension valuation adjustment for the fiscal year as defined in the budgetary summary of the annual Estimates of the Province for that fiscal year;
 - (b) consolidation adjustments for governmental units in that fiscal year; and
 - (c) net income or losses for government business enterprises in that fiscal year,
 exceed revenue for the fiscal year as defined in the budgetary summary of the annual Estimates of the Province for that fiscal year;
 - “fiscal year” means the period from and including April 1st in one year to and including March 31st in the next year.
- (2) In clause 8(d) and Section 49, the taxation year is the earlier of
 - (a) the calendar year in which the annual Estimates tabled in the House of Assembly do not contain a deficit and the Minister of Finance and Treasury Board of the Province provides written notice to the Minister of Finance of the taxation year on or before April 15th of the calendar year; and
 - (b) the calendar year immediately following the calendar year in which the annual Estimates tabled in the House of Assembly

do not contain a deficit and the Minister of Finance and Treasury Board of the Province provides written notice to the Minister of Finance of the taxation year on or before October 15th of the calendar year. 2010, c. 3, s. 3; 2014, c. 34, s. 13.

Subdivision b — Adjustments to Tax

Adjustments

10 There must be added in computing an individual's tax payable under this Part for a taxation year the amount determined by the formula

$$A \times B$$

where

A is the provincial percentage; and

B is the total of

(a) the amount added under section 120.3 of the Federal Act for the purpose of computing the individual's tax payable under Part I of the Federal Act for the taxation year;

(b) the amount added under section 120.31 of the Federal Act for the purpose of computing the individual's tax payable under Part I of the Federal Act for the taxation year; and

(c) the amount added under section 40 of the Federal ITAR for the purpose of computing the individual's tax payable under Part I of the Federal Act for the taxation year. 2000, c. 4, s. 61.

Subdivision c — Tax Credits, Rebates and Other Deductions

Spousal, age and child deductions prior to 2018

11 (1) This Section does not apply for the purpose of computing the tax payable under this Part by an individual for a taxation year after December 31, 2017.

(2) For the purpose of computing the tax payable under this Part by an individual for a taxation year, there may be deducted an amount determined by the formula

$$A \times B$$

where

A is the appropriate percentage for the year; and

B is the total of

(a) in the case of an individual who at any time in the year is a married person or a person who is in a common-law partnership who supports the individual's spouse or common-law partner and is not living separate and apart from the spouse or common-law partner by reason of a breakdown of their marriage or common-law partnership, an amount equal to the total of

(i) \$7,231, and

- (ii) the amount determined by the formula

$$\$6,140 - (C - \$614)$$

where

C is the greater of \$614 and the income of the individual's spouse or common-law partner for the year or, where the individual and the individual's spouse or common-law partner are living separate and apart at the end of the year because of a breakdown of their marriage or common-law partnership, the spouse's or common-law partner's income for the year while married or in a common-law partnership and not so separated;

(b) in the case of an individual who does not claim a deduction for the year because of clause (a) and who, at any time in the year,

(i) is either

(A) an unmarried person and does not live in a common-law partnership, or

(B) a person who is married or in a common-law partnership who neither supported nor lived with the person's spouse or common-law partner and who is not supported by that spouse or common-law partner,

(ii) whether alone or jointly with one or more other persons, maintains a self-contained domestic establishment, in which the individual lives, and actually supports in that establishment a person who, at that time, is

(A) except in the case of a child of the individual, resident in Canada,

(B) wholly dependent for support on the individual, or the individual and the other person or persons, as the case may be,

(C) related to the individual, and

(D) except in the case of a parent or grandparent of the individual, either under 18 years of age or so dependent by reason of mental or physical infirmity,

an amount equal to the total of

(iii) \$7,231, and

(iv) the amount determined by the formula

$$\$6,140 - (D - \$614)$$

where

D is the greater of \$614 and the dependent person's income for the year;

(c) except in the case of an individual entitled to a deduction because of clause (a) or (b), \$7,231;

(d) in the case of an individual who, at any time in the year alone or jointly with one or more persons, maintains a self-contained domestic establishment that is the ordinary place of residence of the individual and of a particular person

(i) who has attained the age of 18 years before that time,

(ii) who is

(A) the individual's child or grandchild, or

(B) resident in Canada and is the parent, grandparent, sibling, aunt, uncle, nephew or niece of the individual or of the individual's spouse or common-law partner, and

(iii) who is

(A) the individual's parent or grandparent and has attained the age of 65 years before that time, or

(B) dependent on the individual because of the particular person's mental or physical infirmity,

the amount determined by the formula

$$\$15,837 - E$$

where

E is the greater of \$11,661 and the particular person's income for the year;

(e) for each dependant of the individual for the year who

(i) attained the age of 18 years before the end of the year, and

(ii) was dependent on the individual because of mental or physical infirmity,

the amount determined by the formula

$$\$7,231 - F$$

where

F is the greater of \$4,845 and the dependant's income for the year; and

(f) in the case of an individual entitled to a deduction in respect of a person because of clause (b) and who would also be entitled, but for paragraph 118(4)(c) of the Federal Act, as that provision read for taxation years before 2017 and as applies to this Act, to a deduction because of clause (d) or (e) in respect of the person, the amount by which the amount that would be determined under clause (d) or (e), as the case may be, exceeds the amount determined under clause (b) in respect of the person.

(3) For the purpose of computing the tax payable under this Part for a taxation year by an individual who, before the end of the year, has attained the age of 65 years, there may be deducted the amount determined by the formula

$$A \times (\$3,531 - B)$$

where

A is the appropriate percentage for the year; and

B is 15% of the amount, if any, by which the individual's income for the year would exceed \$26,284 if no amount were included in respect of a gain from a disposition of property to which section 79 of the Federal Act applies in computing that income.

(4) For the purpose of computing the tax payable under this Part for a taxation year by an individual who was resident in the Province on the last day of the taxation year, there may be deducted an amount determined by the formula

$$A \times B$$

where

A is the appropriate percentage for the year; and

B is the lesser of \$1,000 and the eligible pension income of the individual for the taxation year.

(5) Subsections 118(4), (5) and (6) of the Federal Act apply to subsection (2) and subsections 118(7) and (8) of the Federal Act apply to subsection (4).

(6) For the purpose of computing the tax payable under this Part by an individual for a taxation year, there may be deducted by an eligible individual in respect of each qualified dependant an amount determined by the formula

$$A \times B$$

where

A is the appropriate percentage for the taxation year; and

B is the product obtained when \$100 is multiplied by the number of months in the taxation year, after June 2006, that the individual is the eligible individual in respect of the qualified dependant on the first day of the month.

(7) In subsection (6),

“eligible individual” means a person who, on the last day of the taxation year was resident in the Province and who, at that time,

(a) does not have a cohabiting spouse or common-law partner as defined in section 122.6 of the Federal Act;

(b) has a cohabiting spouse or common-law partner, as defined in section 122.6 of the Federal Act, whose income for the taxation year is greater than the individual's income for the taxation year; or

(c) has a cohabiting spouse or common-law partner, as defined in section 122.6 of the Federal Act, whose income for the taxation year is equal to the individual's income

for the taxation year and the cohabiting spouse or common-law partner renounces the cohabiting spouse's or common-law partner's entitlement to deduct an amount determined by the formula under subsection (6);

“qualified dependant” means a person who, on the first day of the month,

- (a) has not attained the age of six years;
- (b) resides with the eligible individual;
- (c) is not a person in respect of whom a special allowance under the *Children's Special Allowances Act* (Canada) is payable for the month; and
- (d) is not a person in respect of whom an amount has been deducted for a taxation year under subsection (2) because of clause (b) of the description of B in that subsection.

(8) Only one eligible individual may claim the amount determined by the formula in subsection (6) in respect of the same qualified dependant for any given month. 2000, c. 4, s. 61; 2000, c. 29, s. 17; 2003, c. 4, s. 16; 2005, c. 6, s. 7; 2006, c. 2, s. 16; 2007, c. 9, s. 13; 2008, c. 2, s. 8; 2017, c. 6, s. 7; 2018, c. 4, s. 9.

Calculation of deductions for taxation years 2007 to 2017

12 (1) The dollar amount of \$7,231 referred to in clauses 11(2)(a) to (f) and included in the description of B in subsection 11(2) is replaced with the following dollar amount:

- (a) for the 2007 taxation year, \$7,481;
- (b) for the 2008 taxation year, \$7,731;
- (c) for the 2009 taxation year, \$7,981;
- (d) for the 2010 taxation year, \$8,231; and
- (e) for the 2011 taxation year and subsequent taxation years, \$8,481.

(2) The dollar amount of \$6,140 referred to in clauses 11(2)(a) and (b) and included in the description of B in subsection 11(2) is replaced with the following dollar amount:

- (a) for the 2007 taxation year, \$6,352;
- (b) for the 2008 taxation year, \$6,565;
- (c) for the 2009 taxation year, \$6,778;
- (d) for the 2010 taxation year, \$6,989;
- (e) for the 2011 taxation year, \$7,201; and
- (f) for the 2012 taxation year and subsequent taxation years, \$8,481.

(3) The dollar amount of \$614 referred to in clauses 11(2)(a) and (b) and included in the description of B in subsection 11(2) is replaced with the following dollar amount:

- (a) for the 2007 taxation year, \$635;
- (b) for the 2008 taxation year, \$656;
- (c) for the 2009 taxation year, \$678;
- (d) for the 2010 taxation year, \$699;
- (e) for the 2011 taxation year, \$720; and
- (f) for the 2012 taxation year and subsequent taxation years, \$848.

(4) The dollar amount of \$15,837 referred to in clause 11(2)(d) is replaced with the following dollar amount:

- (a) for the 2007 taxation year, \$16,384;
- (b) for the 2008 taxation year, \$16,932;
- (c) for the 2009 taxation year, \$17,480;
- (d) for the 2010 taxation year, \$18,027; and
- (e) for the 2011 taxation year and subsequent taxation years, \$18,575.

(5) The dollar amount of \$11,661 referred to in clause 11(2)(d) and included in the description of E is replaced with the following dollar amount:

- (a) for the 2007 taxation year, \$12,064;
- (b) for the 2008 taxation year, \$12,467;
- (c) for the 2009 taxation year, \$12,870;
- (d) for the 2010 taxation year, \$13,274; and
- (e) for the 2011 taxation year and subsequent taxation years, \$13,677.

(6) The dollar amount of \$4,845 referred to in clauses 11(2)(e) and (f) and included in the description of F is replaced with the following dollar amount:

- (a) for the 2007 taxation year, \$5,013;
- (b) for the 2008 taxation year, \$5,180;
- (c) for the 2009 taxation year, \$5,348;
- (d) for the 2010 taxation year, \$5,515; and
- (e) for the 2011 taxation year and subsequent taxation years, \$5,683.

(7) The dollar amount of \$3,531 referred to in subsection 11(3) and included in the description of B in subsection 11(3) is replaced with the following dollar amount:

- (a) for the 2007 taxation year, \$3,653;

- (b) for the 2008 taxation year, \$3,775;
- (c) for the 2009 taxation year, \$3,897;
- (d) for the 2010 taxation year, \$4,019; and
- (e) for the 2011 taxation year and subsequent taxation years, \$4,141.

(8) The dollar amount of \$26,284 referred to in subsection 11(3) and included in the description of B in subsection 11(3) is replaced with the following dollar amount:

- (a) for the 2007 taxation year, \$27,193;
- (b) for the 2008 taxation year, \$28,101;
- (c) for the 2009 taxation year, \$29,010;
- (d) for the 2010 taxation year, \$29,919; and
- (e) for the 2011 taxation year and subsequent taxation years, \$30,828.

(9) The dollar amount of \$1,000 referred to in subsection 11(4) and included in the description of B in subsection 11(4) is replaced with the following dollar amount:

- (a) for the 2007 taxation year, \$1,035;
- (b) for the 2008 taxation year, \$1,069;
- (c) for the 2009 taxation year, \$1,104;
- (d) for the 2010 taxation year, \$1,138; and
- (e) for the 2011 taxation year and subsequent taxation years, \$1,173. 2006, c. 2, s. 17; 2017, c. 6, s. 8.

Basic personal amount

13 (1) For the purpose of computing the tax payable under this Part by an individual for a taxation year after December 31, 2017, there may be deducted a basic personal amount determined by the formula

$$A \times B$$

where

- A is the appropriate percentage for the year; and
- B is \$8,481.

(2) For the purpose of computing the tax payable under this Part by an individual for a taxation year after December 31, 2017, there may be deducted an additional basic personal amount determined by the formula

$$A \times C$$

where

- A is the appropriate percentage for the year; and
- C is

(a) for an individual with a taxable income of \$25,000 or less for the year, \$3,000; and

(b) for an individual with a taxable income of greater than \$25,000 for the year, \$3,000 less 6% of the amount by which the individual's taxable income exceeds \$25,000 for the year. 2017, c. 6, s. 9.

Spousal amount

14 (1) For the purpose of computing the tax payable under this Part by an individual for a taxation year after December 31, 2017, where at any time in the year the individual

(a) is a married person or a person who is in a common-law partnership;

(b) supports the individual's spouse or common-law partner; and

(c) is not living separate and apart from the spouse or common-law partner by reason of a breakdown of their marriage or common-law partnership,

there may be deducted a spousal amount determined by the formula

$$A \times (B - C)$$

where

A is the appropriate percentage for the year;

B is \$9,329; and

C is the income of the individual's spouse or common-law partner for the year.

(2) For the purpose of computing the tax payable under this Part by an individual for a taxation year after December 31, 2017, where the individual is eligible to make a deduction under subsection (1), there may be deducted an additional spousal amount determined by the formula

$$A \times (D - E)$$

where

A is the appropriate percentage for the year;

D is

(a) for an individual with a taxable income of \$25,000 or less for the year, \$3,000; and

(b) for an individual with a taxable income of greater than \$25,000 for the year, \$3,000 less 6% of the amount by which the individual's taxable income exceeds \$25,000 for the year; and

E is the income of the individual's spouse or common-law partner for the year. 2017, c. 6, s. 9; 2018, c. 4, s. 10.

Dependant amount

15 (1) Except in the case of an individual who claims a deduction for the taxation year under Section 14, for the purpose of computing the tax payable

under this Part by an individual for a taxation year after December 31, 2017, where at any time in the year the individual

- (a) is either
 - (i) an unmarried individual who does not live in a common-law partnership, or
 - (ii) an individual who is married or in a common-law partnership and who
 - (A) neither supports nor lives with the individual's spouse or common-law partner, and
 - (B) is not supported by the individual's spouse or common-law partner; and

(b) whether alone or jointly with one or more other individuals, maintains a self-contained domestic establishment in which the individual lives, and actually supports in that establishment an individual who, at that time, is

- (i) except in the case of a child of the individual, resident in Canada,
- (ii) wholly dependent for support on the individual or on the individual and any other individuals in the domestic establishment, as the case may be,
- (iii) related to the individual, and
- (iv) except in the case of a parent or grandparent of the individual, either under 18 years of age or so dependent by reason of mental or physical infirmity,

there may be deducted a dependant amount determined by the formula

$$A \times (B - C)$$

where

- A is the appropriate percentage for the year;
- B is \$9,329; and
- C is the income of the individual's dependant for the year.

(2) For the purpose of computing the tax payable under this Part by an individual for a taxation year after December 31, 2017, where the individual is eligible to make a deduction under subsection (1), there may be deducted an additional dependant amount determined by the formula

$$A \times (D - E)$$

where

- A is the appropriate percentage for the year;
- D is
 - (a) for an individual with a taxable income of \$25,000 or less for the year, \$3,000; and

(b) for an individual with a taxable income of greater than \$25,000 for the year, \$3,000 less 6% of the amount by which the individual's taxable income exceeds \$25,000 for the year; and

E is the income of the individual's dependant for the year. 2017, c. 6, s. 9; 2018, c. 4, s. 11.

Caregiver amount

16 For the purpose of computing the tax payable under this Part by an individual for a taxation year after December 31, 2017, where at any time in the year the individual, alone or jointly with one or more individuals, maintains a self-contained domestic establishment that is the ordinary place of residence of the individual and of a particular person

- (a) who has attained the age of 18 years;
- (b) who is
 - (i) the individual's child or grandchild, or
 - (ii) the parent, grandparent, sibling, aunt, uncle, nephew or niece of the individual or of the individual's spouse or common-law partner and resident in Canada; and
- (c) who
 - (i) is the individual's parent or grandparent and has attained the age of 65 years, or
 - (ii) is dependent on the individual because of the particular person's mental or physical infirmity,

there may be deducted a caregiver amount determined by the formula

$$A \times (B - C)$$

where

- A is the appropriate percentage for the year;
- B is \$18,575; and
- C is the greater of the particular person's income for the year and \$13,677. 2017, c. 6, s. 9.

Infirm dependant amount

17 For the purpose of computing the tax payable under this Part by an individual for a taxation year after December 31, 2017, for each dependant of the individual who at any time in the year

- (a) has attained the age of 18 years; and
- (b) is dependent on the individual because of mental or physical infirmity,

there may be deducted an infirm dependant amount determined by the formula

$$A \times (B - C)$$

where

- A is the appropriate percentage for the year;

B is \$8,481; and

C is the greater of the dependant's income for the year and \$5,683. 2017, c. 6, s. 9.

Age amount

18 (1) For the purpose of computing the tax payable under this Part by an individual for a taxation year after December 31, 2017, where an individual has attained the age of 65 years before the end of the year, there may be deducted an age amount determined by the formula

$$A \times (B - C)$$

where

A is the appropriate percentage for the year;

B is \$4,141; and

C is 15% of the amount, if any, by which the individual's income for the year would exceed \$30,828 if no amount were included in respect of a gain from a disposition of property to which section 79 of the Federal Act applies in computing that income.

(2) For the purpose of computing the tax payable under this Part by an individual for a taxation year after December 31, 2017, where the individual is eligible to make a deduction under subsection (1), there may be deducted an additional age amount determined by the formula

$$A \times D$$

where

A is the appropriate percentage for the year; and

D is

(a) for an individual with a taxable income of \$25,000 or less for the year, \$1,465; and

(b) for an individual with a taxable income of greater than \$25,000 for the year, \$1,465 less 2.93% of the amount by which the individual's taxable income exceeds \$25,000 for the year. 2017, c. 6, s. 9.

Pension amount

19 For the purpose of computing the tax payable under this Part by an individual for a taxation year after December 31, 2017, where the individual was resident in the Province on the last day of the year, there may be deducted a pension amount determined by the formula

$$A \times B$$

where

A is the appropriate percentage for the year; and

B is the lesser of \$1,173 and the eligible pension income of the individual for the year. 2017, c. 6, s. 9.

Amount for young children

20 (1) In this Section,

“eligible individual” means an individual who, on the last day of the taxation year, is resident in the Province and who, at that time,

(a) does not have a cohabiting spouse or common-law partner as defined in section 122.6 of the Federal Act;

(b) has a cohabiting spouse or common-law partner, as defined in section 122.6 of the Federal Act, whose income for the taxation year is greater than the individual’s income for the taxation year; or

(c) has a cohabiting spouse or common-law partner, as defined in section 122.6 of the Federal Act, whose income for the taxation year is equal to the individual’s income for the taxation year and renounces the cohabiting spouse’s or common-law partner’s entitlement to deduct an amount determined by the formula under subsection (2);

“qualified dependant” means an individual who, on the first day of the month,

(a) has not attained the age of six years;

(b) resides with the eligible individual;

(c) is not a person in respect of whom a special allowance under the *Children’s Special Allowances Act* (Canada) is payable for the month; and

(d) is not a person in respect of whom an amount has been deducted for that taxation year under Section 15.

(2) For the purpose of computing the tax payable under this Part by an eligible individual for a taxation year, there may be deducted by the eligible individual in respect of each qualified dependant an amount for young children determined by the formula

$$A \times B$$

where

A is the appropriate percentage for the year; and

B is the product obtained when \$100 is multiplied by the number of months in the taxation year that the individual is the eligible individual in respect of the qualified dependant on the first day of the month.

(3) Only one eligible individual may claim the amount determined by the formula in subsection (2) in respect of the same qualified dependant for any given month. 2017, c. 6, s. 9.

Charitable gifts deductions

21 For the purpose of computing the tax payable under this Part by an individual for a taxation year, where the individual is entitled to a deduction under subsection 118.1(3) of the Federal Act for the year, there may be deducted such amount as determined by the formula

$$(A \times B) + [C \times (D - B)]$$

where

- A is the appropriate percentage for the year;
- B is the lesser of \$200 and the amount determined for D;
- C is the highest percentage; and
- D is the amount of the individual's total gifts used to determine the deduction amount under section 118.1 of the Federal Act by the individual for the year. 2000, c. 4, s. 61; 2008, c. 2, s. 10.

Medical expense credit

22 For the purpose of computing the tax payable under this Part by an individual for a taxation year ending after December 31, 2003, where the individual is entitled to a deduction under subsection 118.2(1) of the Federal Act for the year, there may be deducted an amount determined by the formula

$$A \times [(B - C) + D]$$

where

- A is the appropriate percentage for the year;
- B is the total of the individual's medical expenses in respect of the individual, the individual's spouse, the individual's common-law partner or a child of the individual who has not attained the age of 18 years before the end of the taxation year that are included in determining the individual's medical expense credit for the year under subsection 118.2(1) of the Federal Act;
- C is the lesser of \$1,637 and 3% of the individual's income for the year; and
- D is the total of all amounts each of which
 - (a) is in respect of a dependant of the individual, within the meaning assigned by subsection 118(6) of the Federal Act, other than a child of the individual who has not attained the age of 18 years before the end of the taxation year; and
 - (b) is, in respect of the dependant,
 - (i) in the taxation year 2004, the lesser of \$5,000 and the amount that would be determined by the formula "E - F" in subsection 118.2 (1) of the Federal Act, if the dollar amount set out in the description of "C" in this subsection were substituted for the dollar amount set out in the description of "F" in subsection 118.2 (1) of the Federal Act,
 - (ii) in taxation years after 2004 and before 2011, the lesser of \$10,000 and the amount that would be determined by the formula "E - F" in subsection 118.2(1) of the Federal Act, if the dollar amount set out in the description of "C" in this subsection were substituted for the dollar amount set out in the description of "F" in subsection 118.2(1) of the Federal Act,
 - (iii) in taxation years after 2010, the amount that would be determined by the formula "E - F" in subsection 118.2(1) of the

Federal Act, if the dollar amount set out in the description of “C” in this subsection were substituted for the dollar amount set out in the description of “F” in subsection 118.2(1) of the Federal Act. 2006, c. 2, s. 18; 2018, c. 4, s. 12.

Child sport and recreational activity tax credit for taxation years 2009 to 2014

23 (1) For the purpose of computing the tax payable under this Part for the 2009 taxation year and subsequent taxation years before January 1, 2015, by an individual there may be deducted in respect of each child of the individual who has not attained the age of 18 years before the end of the year an amount determined by the formula

$$A \times B$$

where

A is the appropriate percentage for the year;

B is the lesser of

(a) \$500; and

(b) the total of all amounts paid by the individual or by the individual’s spouse or common-law partner, for the registration of the child in a designated sport or recreational activity.

(2) Where more than one individual is entitled to a deduction under subsection (1) in respect of the same child,

(a) the total of all amounts so deductible for the year may not exceed the maximum amount that would be so deductible for the year by any one of those individuals for that child if that individual were the only individual entitled to deduct an amount for the year because of that subsection for the child; and

(b) where the individuals cannot agree as to what portion of the amount each can so deduct, the Minister may fix the portions.

(3) The extended meaning of “child” in subsection 252(1) of the Federal Act applies for the purpose of this Section.

(4) The Governor in Council may make regulations designating sport or recreational activities for the purpose of this Section. 2009, c. 5, s. 14; 2015, c. 6, s. 18.

Naturopath or designated medical professional tax credit

24 (1) In this Section, “qualified naturopath” means a person who

(a) is a graduate of a naturopathic school accredited by the Council on Naturopathic Medical Education;

(b) has successfully completed all parts of the Naturopathic Physicians Licensure Examination;

(c) has malpractice insurance coverage; and

(d) is a member in good standing of the Canadian Association of Naturopathic Doctors.

(2) For the purpose of computing the tax payable under this Part by an individual for a taxation year ending after December 31, 2007, there may be deducted an amount determined by the formula

$$A \times (B + C)$$

where

A is the appropriate percentage for the year;

B is the total of the amounts paid by the individual for the taxation year to a qualified naturopath or such other medical professional as may be designated by the Governor in Council in respect of medical services provided to the individual, the individual's spouse or common-law partner or a child of the individual who has not attained the age of 18 years before the end of the taxation year;

C is the total of all amounts each of which

(a) is in respect of a dependant of the individual, within the meaning assigned by subsection 118(6) of the Federal Act, other than a child of the individual who has not attained the age of 18 years before the end of the taxation year; and

(b) is, in respect of the dependant, the lesser of \$10,000 and the total of the amounts paid by the individual for the taxation year to a qualified naturopath or such other medical professional as may be designated by the Governor in Council in respect of medical services provided to the dependant.

(3) The definitions and interpretations contained in section 118.2 of the Federal Act apply for the purpose of this Section, except that, for the purpose of subsection (1), a reference to a "medical practitioner" in section 118.2 is a reference to a qualified naturopath or such other medical professionals as may be designated by the Governor in Council.

(4) Medical expenses in respect of an individual, the individual's spouse, the individual's common-law partner, a child of the individual or a dependent of the individual in this Section may not include an amount for which the individual may claim a tax credit under Section 22.

(5) The Governor in Council may make regulations designating other medical professionals for the purpose of this Section. 2008, c. 2, s. 12.

Impairment credit

25 (1) Where an individual is entitled to deduct an amount pursuant to subsection 118.3(1) of the Federal Act for the purpose of computing the individual's tax payable for a taxation year under Part I of the Federal Act, for the purpose of computing the tax payable under this Part by the individual for the taxation year, there may be deducted an amount determined by the formula

$$A \times (B + C)$$

where

A is the appropriate percentage for the year;

B is \$4,293; and

C is

(a) where the individual has not attained 18 years of age before the end of the year, the amount determined by the formula

$$\$2,941 - (D - \$2,000)$$

where

D is the greater of \$2,000 or the total of the amounts paid in the year for the care and supervision of the individual and included in computing a deduction under sections 63, 64 and 118.2 of the Federal Act; and

(b) in any other case, nil.

(2) Sections 118.3 and 118.4 of the Federal Act apply for the purpose of this Act, except that subsection (1) of this Section applies instead of subsection 118.3(1) of the Federal Act.

(3) Notwithstanding subsections (1) and (2), for the purpose of computing the tax payable under this Part for a taxation year by an individual who is entitled to a deduction under subsection 118.3(2) of the Federal Act for the taxation year in respect of a person referred to in that subsection there may be deducted the amount, if any, by which

(a) the amount deductible under subsection (1) in computing that person's tax payable under this Part for the taxation year, or that would be so deductible if the person were liable under Section 5 to pay tax for the taxation year,

exceeds

(b) the amount of that person's tax payable under this Part for the taxation year if the person were liable under Section 5 to pay tax for the taxation year, computed before any deductions under this Division other than deductions referred to in Sections 11, 13 to 20 and 32. 2000, c. 4, s. 61; 2001, c. 3, s. 10; 2005, c. 6, s. 9; 2017, c. 6, s. 10.

Calculation of impairment credit for taxation years 2007 to 2010

26 (1) The dollar amount of \$4,293 referred to in subsection 25(1) and included in the description of B and C in subsection 25(1) is replaced with the following dollar amount:

- (a) for the 2007 taxation year, \$4,441;
- (b) for the 2008 taxation year, \$4,596;
- (c) for the 2009 taxation year, \$4,738; and
- (d) for the 2010 taxation year, \$4,887.

(2) The dollar amount of \$2,941 referred to in subsection 25(1) and included in the description of C in subsection 25(1) is replaced with the following dollar amount:

- (a) for the 2007 taxation year, \$3,043;
- (b) for the 2008 taxation year, \$3,144;

- (c) for the 2009 taxation year, \$3,246; and
- (d) for the 2010 taxation year, \$3,348.

(3) The dollar amount of \$2,000 referred to in subsection 25(1) and included in the description of C in subsection 25(1) is replaced with the following dollar amount:

- (a) for the 2007 taxation year, \$2,069;
- (b) for the 2008 taxation year, \$2,138;
- (c) for the 2009 taxation year, \$2,207; and
- (d) for the 2010 taxation year, \$2,277. 2006, c. 2, s. 20.

Tuition credit

27 Section 118.5 of the Federal Act applies for the purpose of this Act, except that any reference to “appropriate percentage” in that section is to be read as a reference to “appropriate percentage”, as that term is defined for the purpose of this Division, for the purpose of this Act. 2000, c. 4, s. 61.

Education credit

28 (1) For the purpose of computing the tax payable under this Part by an individual who is a qualifying student for a taxation year, there may be deducted an amount determined by the formula

$$A \times B$$

where

- A is the appropriate percentage for the year; and
- B is the total of the products obtained when
 - (a) \$200 is multiplied by the number of months in the year during which the individual is enrolled in a qualifying educational program as a full-time student at a designated educational institution; and
 - (b) \$60 is multiplied by the number of months in the year, other than months described in clause (a), each of which is a month during which the individual is enrolled at a designated educational institution in a specified educational program that provides that each student in the program spend not less than 12 hours in the month on courses in the program.

(2) Subsections 118.6(1) and (3) of the Federal Act apply for the purpose of this Section, except that the reference in subsection 118.6(3) to “subparagraph (a)(i) of the definition *qualifying student* in subsection (1)” is to be read as “clause 28(1)(a) of the *Income Tax Act* (Nova Scotia)”. 2000, c. 4, s. 61; 2017, c. 6, s. 11.

Unused tuition and education tax credits

29 (1) For the purpose of computing an individual’s tax payable under this Part for a taxation year, there may be deducted the lesser of

- (a) the individual’s unused tuition and education credits at the end of the preceding taxation year; and

(b) the amount that would be the individual's tax payable under this Part for the year if no amount were deductible under this Part, other than an amount deductible under this Section and any of Sections 11, 13 to 20, 23, 25 and 32.

(2) An individual's unused tuition and education tax credits at the end of a taxation year is the amount determined by the formula

$$A + (B - C) - (D + E)$$

where

A is the individual's unused tuition and education credits at the end of the preceding taxation year;

B is the total of all amounts each of which may be deducted under Sections 27 and 28 in computing the individual's tax payable under this Part for the year;

C is the lesser of the value of B and the amount that would be the individual's tax payable under this Part for the year if no amount were deductible under this Part, other than an amount deductible under this Section and any of Sections 11, 13 to 20, 23, 25 and 32;

D is the amount that the individual may deduct under subsection (1) for the year; and

E is the tuition and education tax credits transferred for the year by the individual to the individual's spouse, common-law partner, parent or grandparent.

(3) For the purpose of determining the amount that may be deducted under subsection (1) for a taxation year that begins after 2003 by an individual who was not resident in the Province on the last day of the preceding taxation year, the individual's unused tuition and education tax credits at the end of the preceding taxation year is equal to the amount that would be the individual's unused tuition and education tax credits at the end of the preceding taxation year as determined under section 118.61 of the Federal Act if the percentage applied under sections 118.5 and 118.6 of the Federal Act had been the appropriate percentage for the year instead of the appropriate percentage as defined in the Federal Act.

(4) For the purpose of subsection (3), the amounts mentioned in that subsection may be used only to the extent that they have not been used in claiming a credit pursuant to section 118.5, 118.6 or 118.61 of the Federal Act, or in determining credits transferred pursuant to section 118.81 of the Federal Act, for any taxation year.

(5) For the purpose of determining the amount that may be deducted under subsection (1) for a taxation year that begins after 2003, the unused tuition and education tax credits of an individual who resided in the Province at the end of the 2003 taxation year is equal to 8.79/9.77 of the amount that would be the individual's unused tuition and education tax credits at the end of the 2003 taxation year if this Section were read without reference to this subsection. 2005, c. 6, s. 10; 2017, c. 6, s. 12.

Credit for interest on student loan

30 For the purpose of computing the tax payable under this Part by an individual for a taxation year, where the individual is entitled to a deduction under section 118.62 of the Federal Act for the year, there may be deducted an amount determined by the formula

$$A \times B$$

where

A is the appropriate percentage for the year; and

B is the amount determined for B in the formula in section 118.62 of the Federal Act for the purpose of computing the individual's tax payable under Part I of the Federal Act for the year. 2000, c. 4, s. 61.

Graduate tax credit

31 (1) In this Section,

“eligible program” means a program of post-secondary study delivered at an approved institution that

(a) requires at least 12 weeks of full-time study or is recognized by the Minister as requiring the equivalent of 12 weeks of full-time study; and

(b) is recognized by the Minister in accordance with any criteria that may be prescribed in the regulations;

“graduate tax credit” means a post-secondary graduate tax credit allowed pursuant to subsection (3);

“Minister” means the Minister of Finance and Treasury Board for the Province;

“qualified individual” means an individual who has graduated from an eligible program in a taxation year;

“taxation year” means the 2006 taxation year or a subsequent taxation year.

(2) A qualified individual who has not previously received a graduate tax credit pursuant to this Section may apply to the Minister for a graduate tax credit under this Section in the manner, within the time and in such form as may be prescribed by regulation.

(3) Where the Minister is satisfied that an individual is a qualified individual, the Minister may allow the qualified individual a graduate tax credit for the taxation year in which the qualified individual graduated or in either of the next two taxation years immediately following the taxation year in which the qualified individual graduated, in an amount calculated in accordance with the following formula and rounded up to the next whole dollar:

$$TC = 8.79\% \times \$11,376$$

(4) Where the Minister allows a graduate tax credit to a qualified individual, the Minister shall issue a form confirming the following:

(a) the qualified individual's entitlement to the tax credit;

- (b) the amount of the tax credit that is allowed;
- (c) any additional information that may be required in the regulations.

(5) For the purpose of computing tax payable by a qualified individual under this Part, there may be deducted an amount certified by the Minister in clause (4)(b), in whole or in part, in the taxation year in which the amount is allowed by the Minister and any unused portion may be deducted in any subsequent taxation year up to and including the second taxation year following the taxation year in which the qualified individual graduated, following which there is no further deduction permitted.

(6) Where a qualified individual claims a graduate tax credit in computing the tax payable under this Part for a taxation year, the qualified individual's annual return is to be accompanied by the form issued to the qualified individual pursuant to clause (4)(b).

(7) No amount may be deducted pursuant to this Section on a separate return of income filed pursuant to subsection 70(2) or 150(4) or paragraph 104(23)(d) or 128(2)(e) of the Federal Act.

(8) For the purpose of computing an individual's deduction under this Section for a taxation year that ends in a calendar year in which the individual becomes bankrupt, the total of the amounts deductible for all taxation years of the individual in the calendar year under this Section cannot exceed the amount that would have been deductible under this Section with respect to the calendar year if the individual had not become bankrupt.

- (9) The Governor in Council may make regulations
- (a) establishing criteria to define eligible programs and approved institutions;
 - (b) respecting additional information that must be provided for an application under subsection (2);
 - (c) respecting any additional criteria for approval, amendment or rejection of applications under subsection (2);
 - (d) respecting the form of the certificate to be provided under clause (4)(b);
 - (e) defining, expanding or restricting the meaning of any word or expression used but not defined in this Section;
 - (f) respecting any other matter that the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Section.

(10) A regulation made pursuant to this Section may be made retroactive to a day not earlier than January 1, 2006. 2006, c. 2, s. 21; 2007, c. 9, s. 14; 2014, c. 34, s. 14.

Credit for EI premium and CPP

32 Section 118.7 of the Federal Act applies for the purpose of this Act, except that any reference to "appropriate percentage" in that section is to be read as

a reference to “appropriate percentage” as that term is defined, for the purpose of this Division, for the purpose of this Act. 2000, c. 4, s. 61.

Transfer of credits

33 (1) For the purpose of computing the tax payable under this Part for a taxation year by an individual who, at any time in the year, is a married person or a person who is in a common-law partnership, other than an individual who, by reason of a breakdown of the individual’s marriage or common-law partnership, is living separate and apart from the individual’s spouse or common-law partner at the end of the year and for a period of 90 days commencing in the year, there may be deducted an amount determined by the formula

$$A + B - C$$

where

A is the tuition and education tax credits transferred for the year by the spouse or common-law partner to the individual;

B is the total of all amounts each of which is deductible under subsections 11(2) and (3) and Sections 18, 19 and 25 in computing the spouse’s or common-law partner’s tax payable under this Part for the year, or that would be so deductible if the spouse or common-law partner were liable under Section 5 to pay tax for the year; and

C is the amount, if any, by which

(a) the amount that would be the spouse’s or common-law partner’s tax payable under this Part for the year, or that would be so payable if the spouse or common-law partner were liable under Section 5 to pay tax for the year, if no amount were deductible under this Part, other than an amount deductible under clause 11(1)(c) and Sections 13, 23, 29 and 32,

exceeds

(b) the lesser of

(i) the total of all amounts that may be deducted under Sections 27 and 28 in computing the spouse’s or common-law partner’s tax payable under this Part for the year, or that would be so deductible if the spouse or common-law partner were liable under Section 5 to pay tax for the year, and

(ii) the amount that would be the spouse’s or common-law partner’s tax payable under this Part for the year, or that would be so payable if the spouse or common-law partner were liable under Section 5 to pay tax for the year, if no amount were deductible under this Part, other than an amount deductible under Sections 11, 13 to 20, 23, 25, 29 and 32.

(2) Where for a taxation year a parent or grandparent of an individual, other than an individual in respect of whom the individual’s spouse or common-law partner deducts an amount for the year under clause 11(1)(a), Section 14 or subsection 33(1) of this Act, section 118 or 118.8 of the Federal Act or similar provisions of an income tax statute of another province of Canada, is the only person designated in writing by the individual for the year for the purpose of this subsection, and no other person is designated for the year for the purpose of section 118.9 of the Federal

Act, or similar provision of an income tax statute of another province of Canada, there may be deducted in computing the tax payable under this Part for the year by the parent or grandparent, as the case may be, the tuition and education tax credits transferred for the year by the individual to the parent or grandparent, as the case may be.

(3) In this Section, the tuition and education tax credits transferred for a tuition year by a person to an individual is the lesser of

- (a) the amount determined by the formula

$$A - B$$

where

A is the lesser of

(i) the total of all amounts that may be deducted under Section 27 or 28 in computing the person's tax payable under this Part for the year, or that would be so deductible if the person were liable under Section 5 to pay tax for the year; and

(ii) the amount obtained by multiplying \$5,000 by the appropriate percentage for the year; and

B is the amount that would be the person's tax payable under this Part for the year, or that would be so payable if the person were liable under Section 5 to pay tax for the year, if no amount were deductible under this Part, other than an amount deductible under Sections 11, 13 to 20, 23, 25, 29 and 32; and

(b) the amount for the year that the person designates in writing for the purpose of subsection (1) or (2). 2005, c. 6, s. 11; 2008, c. 2, s. 13; 2017, c. 6, s. 13.

Income not earned in Province

34 There may be deducted in computing an individual's tax payable under this Part for a taxation year the amount determined by the formula

$$A \times B$$

where

A is the provincial percentage; and

B is the amount that the individual may deduct for the taxation year under section 120.2 of the Federal Act for the purpose of computing the individual's tax payable under Part I of the Federal Act. 2000, c. 4, s. 61.

Deduction for taxable dividends

35 For the purpose of computing the tax payable under this Part for a taxation year by an individual who was resident in the Province on the last day of the taxation year, there may be deducted an amount equal to

(a) 38.5% of any amount required by subparagraph 82(1)(b)(i) of the Federal Act to be included in computing the individual's income for a taxation year before January 1, 2015;

(b) 22.94% of any amount required by subparagraph 82(1)(b)(i) of the Federal Act to be included in computing the individual's income for a taxation year after December 31, 2014; and

(c) 8.85% of the total of the amount required under paragraph 82(1)(a.1) and subparagraph 82(1)(b)(ii) of the Federal Act to be included in computing the individual's income for the year. 2007, c. 9, s. 15; 2011, c. 8, s. 7; 2015, c. 6, s. 20.

Deduction for employment out of Canada

36 For the purpose of computing tax payable under this Part by an individual who was resident in the Province on the last day of the taxation year, there may be deducted an amount equal to the provincial percentage of the amount that the individual may deduct under section 122.3 of the Federal Act for that taxation year. 2000, c. 4, s. 61; 2005, c. 6, s. 13.

Regulations

37 The Governor in Council shall for each taxation year, on the recommendation of the Minister of Finance and Treasury Board of the Province, make regulations

(a) prescribing the rate or rates or the manner of calculating the same or specifying the fixed amounts for the purpose of indexing the tax credits available under this Part;

(b) prescribing the rate or rates or the manner of calculating the same or specifying the fixed amounts to be applied to an individual's taxable income or taxable income earned in Canada, including the minimum tax amount for the purpose of the calculation in Section 8;

(c) defining any word or expression used but not defined in this Part. 2006, c. 2, s. 22; 2010, c. 3, s. 4; 2014, c. 34, s. 15; 2016, c. 2, s. 2.

Subdivision d — Restrictions on Credits and Other Rules

Part-year residents

38 (1) Notwithstanding Sections 11 to 33, but subject to subsection (2), where an individual is resident in Canada throughout part of a taxation year and throughout another part of the taxation year is non-resident, for the purpose of computing the individual's tax payable under this Act for the taxation year

(a) the amount deductible for the taxation year under each of Sections 11 to 33 with respect to the part of the taxation year that is not included in the period or periods in the taxation year throughout which the individual is resident in Canada is to be computed as though that part were the whole taxation year; and

(b) the individual is allowed

(i) under subsections 11(3) and (5), Sections 19 to 24, 27, 28, 30 and 32, only the deductions that can reasonably be considered wholly applicable to the period or periods in the taxation year throughout which the individual is resident in Canada, computed as though that period or those periods were the whole taxation year, and

(ii) under subsections 11(1) and (2) and Sections 13 to 18, 25 and 33, only such part of the deductions that can reasonably be considered applicable to the period or periods in the taxation year throughout which the individual is resident in Canada, computed as though that period or those periods were the whole taxation year.

(2) The amount deductible for the taxation year by the individual under each provision referred to in subsection (1) may not exceed the amount that would have been deductible under that provision if the individual had been resident in Canada throughout the taxation year. 2007, c. 9, s. 16; 2008, c. 2, s. 14; 2009, c. 5, s. 16; 2017, c. 6, s. 14.

Ordering of credits

39 (1) In computing an individual's tax payable under this Part for a taxation year ending before January 1, 2018, the following provisions must be applied in the following order: subsections 11(1), 11(5) and 11(2), Section 32, subsection 11(3), Sections 25, 23, 30, 27 and 28, subsections 33(2) and 33(1), Sections 22, 24, 21, 35, 51, 77, 59, 53, 56, 54, 55 and 60 and subsection 78(3).

(2) In computing an individual's tax payable under this Part, for the 2018 taxation year and subsequent taxation years, the following provisions must be applied in the following order: subsections 11(1), 11(5) and 11(2), Section 32, subsection 11(3), Sections 14, 15, 16, 17, 25, 23, 30, 27 and 28, subsections 33(2) and 33(1), Sections 22, 24, 21, 35, 51, 77, 59, 53, 56, 57, 58, 54, 55 and 60 and subsection 78(3). 2017, c. 6, s. 15; 2019, c. 16, s. 1.

Credits in separate returns

40 Where a separate return of income with respect to an individual is filed under subsection 70(2), 104(23) or 150(4) of the Federal Act for a particular period and another return of income under this Act with respect to the individual is filed for a period ending in the calendar year in which the particular period ends, for the purpose of computing the tax payable under this Act by the individual in those returns, the total of all deductions claimed in all those returns under any of subsection 11(3), Sections 19 and 21 to 32 and subsection 33(2) of this Act may not exceed the total that could be deducted under each of those provisions for the taxation year with respect to the individual if no separate returns were filed under subsections 70(2), 104(23) and 150(4) of the Federal Act. 2007, c. 9, s. 16; 2008, c. 2, s. 16; 2009, c. 5, s. 18; 2017, c. 6, s. 16.

Tax payable by non-resident

41 Subsections 11(1) to (3), Sections 13 to 19, 22, 24, 25, 28 and 33 of this Act, with respect to the application of subsections 118.3(2) and (3) of the Federal Act, do not apply for the purpose of computing the tax payable under this Act for a taxation year by an individual who at no time in the taxation year is resident in Canada unless all or substantially all of the individual's income for the year is included in computing the individual's taxable income earned in Canada for the year. 2007, c. 9, s. 16; 2008, c. 2, s. 17; 2009, c. 5, s. 19; 2017, c. 6, s. 17.

Credits in year of bankruptcy

42 Notwithstanding Sections 11 to 33, for the purpose of computing an individual's tax payable under this Part for a taxation year that ends in a calendar year in which the individual becomes bankrupt, the individual is allowed only

- (a) such of the deductions as the individual is entitled to under subsections 11(3) and (5) and Sections 19 to 24, 27 to 30 and 32 as can reasonably be considered wholly applicable to the taxation year; and
- (b) such part of the deductions as the individual is entitled to under Section 11, other than subsections 11(3) and (5), and Sections 13 to 18, 25 and 33 as can reasonably be considered applicable to the taxation year,

except that the total of the amounts so deductible for all taxation years of the individual in the calendar year under any of those provisions may not exceed the amount that would have been deductible under that provision in respect of the calendar year if the individual had not become bankrupt. 2007, c. 9, s. 16; 2008, c. 2, s. 18; 2009, c. 5, s. 20; 2017, c. 6, s. 18.

Tax payable by inter vivos trust

43 (1) In this Section,

“graduated rate estate” means a graduated rate estate as defined in subsection 248(1) of the Federal Act;

“qualified disability trust” means a qualified disability trust as defined in subsection 122(3) of the Federal Act.

(2) The tax payable for a taxation year ending before January 1, 2016, by an *inter vivos* trust is the amount equal to the tax payable under subsection 122(1) of the Federal Act, except that the reference to “29%”, or to the amount that it is amended to read, is to be read, for the purpose of this Act, as a reference to the “highest percentage”.

(3) The tax payable for a taxation year ending after December 31, 2015, by any trust, other than a graduated rate estate or qualified disability trust, is the total of

- (a) 21% of the amount taxable for the taxation year; and
- (b) where subsection 122(2) of the Federal Act applies to the trust for the taxation year, the amount equal to the amount that would be determined under paragraph 122(1)(c) of the Federal Act, except that the reference to “29%”, or to the amount that it is amended to read, is to be read, for the purpose of this Act, as a reference to the “highest percentage”. 2016, c. 2, s. 3.

Where individual bankrupt

44 Subsection 128(2) of the Federal Act applies for the purpose of this Act except that, in addition to any other necessary modifications required for this Act, that subsection is to be read as if, in addition to the deductions referred to in clauses 128(2)(e)(iii)(A) to (C), that provision included a reference to the deductions under subsection 11(5) and Sections 20 and 23 of this Act. 2007, c. 9, s. 16; 2017, c. 6, s. 19.

Subdivision e — Other Taxes Payable

Tax on split income

45 Section 120.4 of the Federal Act applies for the purpose of this Act, except that the reference to “29%”, or to the amount that it is amended to read, in subsection 120.4(2) of the Federal Act, is to be read, for the purpose of this Act, as a reference to the “highest percentage”. 2000, c. 4, s. 61.

Minimum tax

46 Where an individual is required to pay tax under section 127.5 of the Federal Act in respect of a taxation year, there must be added to the individual’s tax payable under this Part for the taxation year an amount determined by the formula

$$A \times B$$

where

A is the provincial percentage; and

B is the individual’s additional tax for the taxation year determined pursuant to subsection 120.2(3) of the Federal Act. 2000, c. 4, s. 61.

Subdivision f — Multi-jurisdictional and Non-resident Individuals

Where income earned outside Province

47 Notwithstanding subdivisions a to e, the tax payable under subdivisions a to e for a taxation year by an individual

(a) who resided in the Province on the last day of the taxation year but had income earned in the taxation year outside the Province; or

(b) who did not reside in the Province on the last day of the taxation year but had income earned in the taxation year in the Province,

is the amount determined by the formula

$$A \times B / C$$

where

A is the tax otherwise payable by the individual under subdivisions a to e;

B is the individual’s income earned in the taxation year in the Province;
and

C is the individual’s income for the year. 2000, c. 4, s. 61.

Restriction on tax credits where out-of-Province income

48 Where an individual resided in the Province on the last day of a taxation year but had income earned in the taxation year outside the Province, the individual may deduct from the amount of tax otherwise payable for the taxation year as determined under Section 47 an amount determined by the formula

$$A \times B / C$$

where

A is the total of all amounts each of which is deductible under subsections 11(3) and (5) and Section 19, 20, 23, 35 or 36 by the individual for the taxation year;

B is the individual's income earned in the taxation year outside the Province; and

C is the individual's income for the year. 2005, c. 6, s. 14; 2007, c. 9, s. 17; 2017, c. 6, s. 20.

Subdivision g — Surtax

Surtax payable

49 In addition to the income tax payable, computed in accordance with subdivisions a to f, by an individual for a taxation year before the 2010 taxation year and after the taxation year immediately preceding the taxation year determined under subsection 9(2), every individual shall pay a personal income surtax in respect of the taxation year equal to 10% of the amount, if any, by which the tax computed pursuant to subdivisions a to f for the taxation year exceeds \$10,000. 2010, c. 3, s. 5.

Subdivision h — Foreign Tax Deduction

Foreign tax deduction

50 (1) Where an individual resided in the Province on the last day of a taxation year and had income for the year that included income earned in a country other than Canada in respect of which non-business-income tax was paid by the individual to the government of a country other than Canada, the individual may deduct from the tax payable by the individual under this Act for that taxation year an amount equal to the lesser of

(a) the amount, if any, by which any non-business-income tax paid by the individual for the year to the government of such other country exceeds

(i) where section 127.5 of the Federal Act does not apply to the individual for the taxation year, the amount deductible from the individual's tax payable under Part I of the Federal Act for that year pursuant to subsection 126(1) of the Federal Act in respect of any non-business-income tax paid to the government of such other country, or

(ii) where section 127.5 of the Federal Act applies to the individual for the taxation year, the amount of the individual's special foreign tax credit for the year determined under section 127.54 of the Federal Act that is in respect of any non-business-income tax paid to the government of such other country; and

(b) that proportion of the tax otherwise payable under this Act for that taxation year that

(i) the amount, if any, by which the total of the individual's qualifying incomes exceeds the total of the individual's qualifying losses

(A) for the year, if the individual is resident in Canada throughout the year, and

(B) for the part of the year throughout which the individual is resident in Canada, if the individual is non-resident at any time of the year,

from sources in that country, on the assumption that

(C) no businesses were carried on by the individual in that country,

(D) no amount was deducted under subsection 91(5) of the Federal Act in computing the individual's income for the year, and

(E) the individual's income from employment in that country was not from a source in that country to the extent of the lesser of the amounts determined in respect thereof under paragraphs 122.3(1)(c) and (d) of the Federal Act for the year,

is of

(ii) the amount, if any, by which

(A) where the individual was resident in Canada throughout the year, the individual's income earned in the year in the Province computed without reference to paragraph 20(1)(ww) of the Federal Act, and

(B) where the individual was non-resident at any time in the year, the individual's income earned in the year in the Province that is included in the amount determined under paragraph 114(a) of the Federal Act in respect of the individual for the year,

exceeds

(C) the total of all amounts each of which is an amount deducted under section 110.6 or paragraph 111(1)(b) of the Federal Act or deductible under any of paragraphs 110(1)(d) to (d.3), (f), (g) and (j) or section 112 of the Federal Act for the year, in computing the individual's taxable income for the year.

(2) For the purpose of subsection (1) and clause 67(b), the non-business-income tax paid by a taxpayer to the government of a country other than Canada in respect of the taxpayer's income for a taxation year is the non-business-income tax paid by the taxpayer to the government of that country in respect of that year as determined under the definition "non-business-income tax" in subsection 126(7) of the Federal Act.

(3) For the purpose of this Section and Section 67,

(a) the government of a country other than Canada includes the government of a state, province or other political subdivision of that country;

(b) where a taxpayer's income for a taxation year is in whole or in part from sources in more than one country other than Canada, subsection 50(1) and Section 67 are to be read as providing for separate deductions in respect of each of the countries other than Canada; and

(c) where any income from a source in a particular country would be tax-exempt income but for the fact that a portion of the income is subject to an income or profits tax imposed by the government of a country other than Canada, the portion is deemed to be income from a separate source in the particular country.

(4) For the purpose of this Section and Section 67, the definitions of "qualifying incomes", "qualifying losses" and "tax-exempt income" in subsection 126(7) of the Federal Act apply. 2003, c. 4, s. 18.

Subdivision i — Low Income Tax Reduction

Low income deduction

51 (1) In this Section,

"adjusted income" of an individual for a taxation year means the total of all amounts each of which would be the income for the year of

- (a) the individual; or
- (b) the individual's qualified relation for the years,

both calculated as if no amount were included under subsection 56(6) of the Federal Act or in respect of any gain from a disposition of property to which section 79 of the Federal Act applies in computing that income and as if no amount were deductible under paragraph 60(y) of the Federal Act in computing that income;

"eligible individual", for a taxation year, means an individual, other than a trust, who is resident in the Province on December 31st of the taxation year and includes an individual who died in the taxation year and was a resident of the Province on the day of death, and is

- (a) married or in a common-law partnership;
- (b) a parent of a child; or
- (c) 19 years of age or over;

"qualified dependant" of an individual for a taxation year means a person who is

- (a) a person in respect of whom the individual or the individual's qualified relation for the year is the only person who deducts an amount under Sections 11 or 13 to 20 for the year; or
- (b) a child of the individual residing with the individual at the end of the year,

and who is not

- (c) an eligible individual for the year;

(d) the qualified relation of an individual for the year; or

(e) a person in respect of whom an amount is deemed under this Section to be paid by any other individual for the year;

“qualified relation” of an individual for a taxation year means the person who, at the end of the year, is the individual’s cohabiting spouse or common-law partner, within the meaning assigned by section 122.6 of the Federal Act, and includes a cohabiting spouse or common-law partner who died during the taxation year and who was resident in the Province on the cohabiting spouse’s or common-law partner’s day of death.

(2) For the purpose of this Section, the income of a person who is non-resident at any time in a taxation year is deemed to be equal to the amount that would be the person’s income for the year if the person were resident in Canada throughout the year.

(3) Notwithstanding subsection (1), a person is deemed not to be an eligible individual for a taxation year or a qualified relation or qualified dependant of an individual for a taxation year if the person is, at the end of the year,

(a) a person described in paragraph 149(1)(a) or (b) of the Federal Act; or

(b) confined to a prison or similar institution and has been so confined for a period of, or periods the total of which in the year was more than, six months.

(4) Subject to subsection (5), where an eligible individual for a taxation year files with the individual’s return of income, other than a return filed under paragraph 128(2)(e) of the Federal Act, under this Act for the year a prescribed form, containing prescribed information, the amount, if any, by which the total of

(a) \$300;

(b) \$300 for a person who is the qualified relation of the individual for the year;

(c) \$300, if the individual has no qualified relation for the year and is entitled to deduct an amount for the year under subsection 118(1) of the Federal Act by reason of paragraph (b) thereof in respect of a qualified dependant of the individual for the year; and

(d) the product obtained when \$165 is multiplied by the number of qualified dependants of the individual for the year, other than a qualified dependant in respect of whom an amount is included by reason of clause (c) in computing an amount deemed to be paid pursuant to this subsection for the year,

exceeds

(e) 5% of the amount, if any, by which

(i) the individual’s adjusted income for the year,

exceeds

(ii) \$15,000,

may be deducted from tax otherwise payable under Sections 7 to 50 for a taxation year.

(5) Notwithstanding subsection (4), where an individual is a qualified relation of another individual for a taxation year, only one of those individuals may apply under subsection (4) for the year.

(6) The Governor in Council may make regulations adjusting annually the dollar amounts set out in subsection (4). 2005, c. 6, s. 15; 2006, c. 2, s. 23; 2007, c. 9, s. 18; 2008, c. 2, s. 19; 2011, c. 8, s. 8; 2017, c. 6, s. 21.

Regulations

52 The Governor in Council may make regulations

(a) defining a credit for recipients of the Guaranteed Income Supplement;

(b) prescribing the eligibility criteria and payment amounts for the credit for recipients of the Guaranteed Income Supplement;

(c) prescribing anything necessary or advisable to enable the Crown in right of Canada to administer, on behalf of the Crown in right of the Province, the credit for recipients of the Guaranteed Income Supplement. 2010, c. 3, s. 6.

Subdivision j — Nova Scotia Post-secondary Graduate Tax Credit

Post-secondary graduate tax credit for 2007 and 2008 graduates

53 (1) In this Section,

“approved institution” means

(a) an institution of learning designated from time to time pursuant to subsection 3(1) of the *Canada Student Financial Assistance Act*;

(b) a specified educational institution within the meaning of the *Canada Student Loans Act*; or

(c) such other institution of learning as may be prescribed by regulations;

“eligible taxation year” means the year an individual graduates from an approved institution and the two taxation years immediately following;

“program of studies” means a program of studies as defined by the *Canada Student Financial Assistance Regulations*;

“proof of graduation” means

(a) a certified copy of the individual’s certificate of completion or diploma from the approved institution certified by a person authorized by the approved institution to make certifications;

- (b) a letter from the approved institution signed by a person authorized to confirm such information by the approved institution confirming the successful completion, or graduation, from a program of studies at the institution by the individual; or
 - (c) such other documentation satisfactory to the Minister of Finance.
- (2) Subject to subsection (3), an individual may deduct from tax otherwise payable pursuant to this Act in an eligible taxation year
 - (a) an amount not exceeding the aggregate amount of \$1,000 if the individual graduates from an approved institution in the year 2007; or
 - (b) an amount not exceeding the aggregate amount of \$2,000 if the individual graduates from an approved institution after December 31, 2007, and before January 1, 2009.
- (3) An individual may claim a deduction pursuant to this Section if the individual
 - (a) other than an individual that is a trust, was resident in the Province on December 31st of the taxation year, and includes an individual who died in the taxation year and was a resident of the Province on the day of death;
 - (b) provides proof of graduation from an approved institution for a taxation year after 2006; and
 - (c) files proof of graduation for the eligible taxation year with the individual's annual return for the taxation years in respect of which the deduction is claimed.
- (4) An individual is not entitled to claim the deduction referred to in this Section if the individual completed a program of studies at an approved institution since 2006 and has previously received the deduction under this Section or Section 31.
- (5) No amount may be deducted pursuant to this Section on a separate return of income filed pursuant to subsection 70(2) or 150(4) or paragraph 104(23)(d) or 128(2)(e) of the Federal Act.
- (6) For the purpose of computing an individual's deduction under this Section for a taxation year that ends in a calendar year in which the individual becomes bankrupt, the total of the amounts deductible for all taxation years of the individual in the calendar year under this Section cannot exceed the amount that would have been deductible under this Section with respect to the calendar year if the individual had not become bankrupt.
- (7) The Governor in Council may make regulations
 - (a) respecting criteria or requirements for a program of studies at a post-secondary level at an approved institution;
 - (b) designating approved institutions;

(c) respecting such other requirements for documentation as proof of graduation;

(d) defining, expanding or restricting the meaning of any word or expression used but not defined in this Section;

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

(8) A regulation made pursuant to this Section may be made retroactive to a day not earlier than January 1, 2007. 2007, c. 9, s. 19; 2009, c. 5, s. 21.

Subdivision k — Nova Scotia Post-secondary Graduate Retention Rebate

Post-secondary graduate retention rebate for 2009 to 2013 graduates

54 (1) In this Section,

“certificate” means a certificate issued to an individual by an eligible institution upon successful completion of a program of studies;

“degree” means any recognition in writing of academic achievement that is called a degree, and includes the degrees of bachelor, master and doctorate;

“diploma” means a diploma issued to an individual by an eligible institution upon successful completion of a program of studies;

“eligible institution” means

(a) an institution of learning designated from time to time pursuant to subsection 3(1) of the *Canada Student Financial Assistance Act*;

(b) a specified educational institution within the meaning of the *Canada Student Loans Act*; or

(c) such other institution of learning as may be prescribed by regulation;

“program of studies” means a program of studies as defined in the *Canada Student Financial Assistance Regulations*;

“proof of graduation” means

(a) a certified copy of an individual’s degree, diploma or certificate from an eligible institution certified by a person authorized by the eligible institution to make certifications;

(b) a letter from an eligible institution signed by a person authorized to confirm such information by the eligible institution confirming the graduation from a post-secondary program of studies at the eligible institution by an individual; or

(c) such other documentation satisfactory to the Minister of Finance.

(2) Subject to subsections (3), (6), (7) and (8), after December 31, 2008, and before January 1, 2014, an individual graduating with a degree from an eligible institution after December 31, 2008, and before January 1, 2014, may deduct from tax otherwise payable pursuant to this Act

(a) an amount not exceeding the aggregate amount of \$2,500 in the taxation year that is the year of graduation;

(b) an amount not exceeding the aggregate amount of \$2,500 in the first taxation year immediately following the year of graduation;

(c) an amount not exceeding the aggregate amount of \$2,500 in the second taxation year immediately following the year of graduation;

(d) an amount not exceeding the aggregate amount of \$2,500 in the third taxation year immediately following the year of graduation; and

(e) an amount not exceeding the aggregate amount of \$2,500 in the fourth taxation year immediately following the year of graduation.

(3) The total amount of all deductions to which an individual graduating with a degree is entitled pursuant to this Section may not exceed \$12,500 in the individual's lifetime.

(4) Subject to subsections (5) to (8), after December 31, 2008, and before January 1, 2014, an individual graduating with a diploma or certificate from an eligible institution after December 31, 2008, and before January 1, 2014, may deduct from tax otherwise payable pursuant to this Act

(a) an amount not exceeding the aggregate amount of \$1,250 in the taxation year that is the year of graduation;

(b) an amount not exceeding the aggregate amount of \$1,250 in the first taxation year immediately following the year of graduation;

(c) an amount not exceeding the aggregate amount of \$1,250 in the second taxation year immediately following the year of graduation;

(d) an amount not exceeding the aggregate amount of \$1,250 in the third taxation year immediately following the year of graduation; and

(e) an amount not exceeding the aggregate amount of \$1,250 in the fourth taxation year immediately following the year of graduation.

(5) The total amount of all deductions to which an individual graduating with a diploma or certificate is entitled pursuant to this Section may not exceed \$6,250 in the individual's lifetime.

(6) An individual may claim a deduction pursuant to this Section if the individual

(a) other than an individual that is a trust, was resident in the Province on December 31st of the taxation year, and includes an individual who died in the taxation year and was a resident of the Province on the day of death; and

(b) provides proof of graduation from an eligible institution for a taxation year after December 31, 2008.

(7) No amount may be deducted pursuant to this Section on a separate return of income filed pursuant to subsection 70(2) or 150(4) or paragraph 104(23)(d) or 128(2)(e) of the Federal Act.

(8) Notwithstanding anything contained in this Section, the total amount of all deductions to which an individual is entitled pursuant to this Section may not exceed \$12,500 in the individual's lifetime.

(9) The Governor in Council may make regulations

(a) designating eligible institutions;

(b) respecting such other requirements for documentation as proof of graduation;

(c) defining, expanding or restricting the meaning of any word or expression used but not defined in this Section;

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

(10) A regulation made pursuant to this Section may be made retroactive to a day not earlier than January 1, 2009. 2009, c. 5, s. 22; 2014, c. 6, s. 3.

Subdivision 1 — Age Tax Credit for Low Income Seniors

Age tax credit

55 (1) Subject to subsection (2), an individual may deduct from tax otherwise payable pursuant to this Act the amount of \$1,000 for the 2014 and subsequent taxation years.

(2) An individual may claim a deduction pursuant to this Section if the individual

(a) other than an individual that is a trust, was resident in the Province on December 31st of the taxation year, and includes an individual who died in the taxation year and was a resident of the Province on the day of death;

(b) attained the age of 65 years on or before December 31st of the taxation year; and

(c) had a taxable income or taxable income earned in Canada of less than \$24,000 for the taxation year.

(3) No amount may be deducted pursuant to this Section on a separate return of income filed pursuant to subsection 70(2) or 150(4) or paragraph 104(23)(d) or 128(2)(e) of the Federal Act. 2013, c. 3, s. 7.

Subdivision m — Equity Tax Credits

Equity tax credit

56 (1) In this Section,

“equity tax credit” means a credit in respect of a tax-credit certificate issued to a taxpayer pursuant to subsection 8(5) of the *Equity Tax Credit Act*;

“tax otherwise payable” means the amount that would, but for this Section, be the tax otherwise payable pursuant to this Act.

(2) Where, in respect of a taxation year, a taxpayer has been issued a tax-credit certificate pursuant to subsection 8(5) of the *Equity Tax Credit Act*, there must be deducted from the tax otherwise payable by that taxpayer pursuant to this Part in respect of that taxation year the lesser of

(a) the aggregate of the equity tax credit and any amount referred to in clause (5)(c) or (d); and

(b) \$17,500.

(3) A taxpayer who is entitled to a deduction pursuant to this Section shall file, with the taxpayer’s annual return for any taxation year in respect of which a deduction is claimed pursuant to this Section, a copy of the tax-credit certificate.

(4) Notwithstanding Section 79 and subsection 89(1), a taxpayer is not entitled to a deduction pursuant to this Section unless the taxpayer files a return within three years after the end of the taxation year to which the deduction pertains.

(5) Where a taxpayer

(a) has been issued a tax-credit certificate pursuant to subsection 8(5) of the *Equity Tax Credit Act*; and

(b) the amount of the equity tax credit exceeds the amount of tax payable by that taxpayer for the taxation year,

the taxpayer may

(c) carry back and deduct any unused balance of the equity tax credit from tax otherwise payable by the taxpayer in any one or more of the taxpayer’s three previous taxation years if, in any taxation year the equity tax credit is carried back, the total equity tax credit deducted from tax otherwise payable does not exceed the amount in clause (2)(b) that was applicable for that taxation year; or

(d) carry forward and deduct any unused balance of the equity tax credit from tax otherwise payable by the taxpayer in any one or more of the taxpayer’s seven subsequent taxation years if, in any taxation year the equity tax credit is carried forward, the total equity tax credit deducted from tax otherwise payable does not exceed the amount in clause (2)(b) that is applicable for that taxation year.

(6) For greater certainty, subsection 11(2) of the *Equity Tax Credit Act* applies for the purpose of this Section. 2000, c. 4, s. 61; 2003, c. 4, s. 19; 2005, c. 6, s. 16; 2006, c. 2, s. 24; 2009, c. 5, s. 23.

Innovation equity tax credit

57 (1) In this Section,

“approved corporation” means a corporation approved under subsection (3);

“eligible corporation” means a corporation that satisfies the criteria prescribed by the regulations;

“eligible investment” means an investment made by an eligible investor that satisfies the criteria prescribed by the regulations;

“eligible investor” means an individual or corporation resident in the Province who satisfies the criteria prescribed by the regulations;

“innovation equity tax credit” means, in respect of a taxation year, the amount of an eligible investment made in the taxation year multiplied by the innovation equity tax credit rate;

“innovation equity tax-credit rate” means the rate prescribed by the regulations that applies to the eligible investor;

“maximum eligible investment” means the amount prescribed by the regulations that applies to the eligible investor;

“prohibited purpose” means a purpose prescribed by the regulations as being a prohibited purpose;

“specified issue” means an issue of shares that satisfies the criteria prescribed by the regulations;

“tax-credit certificate” means a certificate entitling an eligible investor to a deduction under this Section.

(2) This Section applies with respect to eligible investments made by individuals after December 31, 2018, and before March 1, 2024.

(3) This Section applies with respect to eligible investments made by corporations on or after April 1, 2019, and before March 1, 2024.

(4) A corporation that intends to make a specified issue may apply to the Minister of Finance and Treasury Board of the Province to be approved under subsection (5).

(5) Where the Minister of Finance and Treasury Board of the Province is satisfied that

(a) a corporation that has applied to be approved is an eligible corporation;

(b) the specified issue in respect of which the application was made complies with the *Securities Act*;

(c) the funds to be raised will not be used for a prohibited purpose; and

(d) the corporation has satisfied any requirements prescribed by the regulations,

the Minister of Finance and Treasury Board of the Province shall approve the corporation.

(6) The Minister of Finance and Treasury Board of the Province may impose upon an approved corporation any conditions that the Minister of Finance and Treasury Board of the Province considers appropriate.

(7) The Minister of Finance and Treasury Board of the Province may cancel the approval under subsection (5) of a corporation

(a) in the event that the corporation breaches a condition imposed upon it under subsection (6); or

(b) in the circumstances prescribed by the regulations.

(8) Where an approved corporation has made a specified issue, the approved corporation may apply to the Minister of Finance and Treasury Board of the Province, in the manner and within the time prescribed by the regulations, for a tax-credit certificate entitling each eligible investor who has made an eligible investment to a deduction under this Section.

(9) The Minister of Finance and Treasury Board of the Province may not issue a tax-credit certificate if, in the opinion of the Minister of Finance and Treasury Board of the Province, the specified issue or eligible investment to which the tax-credit certificate relates is an avoidance transaction as defined in Section 103.

(10) Where, in respect of a taxation year, an eligible investor has been issued a tax-credit certificate, the eligible investor may deduct from the tax otherwise payable under this Act for the taxation year an amount not exceeding the lesser of

(a) the aggregate of the innovation equity tax credit and any amount eligible for deduction under subsection (11); and

(b) the maximum eligible investment multiplied by the innovation equity tax-credit rate.

(11) Where an eligible investor has been issued a tax-credit certificate and the amount of the innovation equity tax credit exceeds the amount of tax payable by the eligible investor for the taxation year, the eligible investor may

(a) carry back and deduct any unused balance of the innovation equity tax credit from tax otherwise payable by the eligible investor in any one or more of the eligible investor's three previous taxation years that end after April 1, 2019; or

(b) carry forward and deduct any unused balance of the innovation equity tax credit from tax otherwise payable by the eligible investor in any one or more of the eligible investor's seven subsequent taxation years,

if, in the taxation year to which the unused balance is carried back or forward, the aggregate amount deducted from tax otherwise payable does not exceed the product, for that taxation year, of the maximum eligible investment multiplied by the innovation equity tax-credit rate.

(12) An eligible investor who has made a deduction under this Section is liable, in the circumstances prescribed by the regulations, to pay to the Minister of Finance and Treasury Board of the Province an amount equal to the deduction.

(13) A corporation is jointly and severally liable, in the circumstances prescribed by the regulations, for any liability incurred by an eligible investor under subsection (12) for a deduction made by the eligible investor in respect of the corporation.

(14) The Minister of Finance and Treasury Board of the Province shall conduct or cause to be conducted a review of the tax credit established by this Section on or after December 31, 2022, and prepare a written report of the results of the review no later than December 31, 2023.

(15) The Minister of Finance and Treasury Board of the Province shall table the report referred to in subsection (14) in the Assembly if the Assembly is then sitting or, where the Assembly is not then sitting, file the report with the Clerk of the Assembly.

(16) The Governor in Council may make regulations

(a) prescribing the criteria that a corporation must satisfy to be an eligible corporation;

(b) prescribing the criteria that an investment must satisfy to be an eligible investment;

(c) prescribing the criteria that an investor must satisfy to be an eligible investor;

(d) prescribing the innovation equity tax-credit rate for individuals and the innovation equity tax-credit rate for corporations;

(e) prescribing the maximum eligible investment for eligible investors that are individuals and the maximum eligible investment for eligible investors that are corporations;

(f) prescribing purposes as being prohibited purposes;

(g) prescribing the criteria that an issue of shares must satisfy to be a specified issue;

(h) prescribing requirements a corporation must satisfy to be eligible to be approved under subsection (5);

(i) prescribing the circumstances in which the Minister of Finance and Treasury Board of the Province may, under subsection (7), cancel the approval of a corporation;

(j) prescribing the manner in which and the time within which an approved corporation may apply for a tax-credit certificate;

(k) prescribing the circumstances in which an eligible investor who has made a deduction under this Section is liable to pay to the Minister of Finance and Treasury Board of the Province an amount equal to the deduction;

(l) prescribing the circumstances in which a corporation is jointly and severally liable for any liability incurred by an eligible

investor under subsection (12) for a deduction made by the eligible investor in respect of the corporation;

(m) prescribing penalties for failure to comply with this Section or the regulations;

(n) defining any word or expression used but not defined in this Section;

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

(17) A regulation made pursuant to this Section may be made retroactive to a day not earlier than January 1, 2019. 2018, c. 4, s. 13; 2019, c. 16, s. 2.

Venture capital tax credit

58 (1) In this Section,

“annual maximum venture capital tax credit” means the aggregate amount shown on all venture capital tax-credit certificates issued for a period as prescribed by the regulations;

“eligible investment” means an investment made in a qualifying venture capital fund by an eligible investor that satisfies the criteria established by the regulations;

“eligible investor” means an individual or a corporation who invests in a qualifying venture capital fund and satisfies the criteria established by the regulations;

“maximum eligible investment” means the amount prescribed by the regulations;

“qualifying venture capital fund” means a corporation or limited partnership with its head office in the Province that satisfies the conditions established by the regulations and has been registered under subsection (5);

“venture capital tax credit” means, in respect of a taxation year for an eligible investor, 15% of the amount of the eligible investment made in a qualifying venture capital fund

(a) in the then current calendar year or 60 days immediately following that calendar year where the eligible investor is an individual; or

(b) in the then current taxation year where the eligible investor is a corporation.

(2) For the purpose of this Section and the regulations, “Minister of Finance and Treasury Board of the Province” includes a person designated by the Minister of Finance and Treasury Board of the Province.

(3) This Section applies with respect to eligible investments made after March 31, 2019, and before April 1, 2024.

(4) A corporation or a limited partnership may apply, in the manner established by the regulations, to be registered as a qualifying venture capital fund.

(5) The Minister of Finance and Treasury Board of the Province may, in the Minister's discretion, register a corporation or a limited partnership as a qualifying venture capital fund if the Minister of Finance and Treasury Board of the Province is satisfied that the applicant meets the requirements established by the regulations.

(6) Where the Minister of Finance and Treasury Board of the Province accepts an application for registration, the Minister of Finance and Treasury Board of the Province shall issue a certificate of registration to that effect, and the applicant is considered to be registered on the date of the certificate of registration.

(7) The Minister of Finance and Treasury Board of the Province may revoke the certificate of registration of a corporation or limited partnership in the circumstances established by the regulations.

(8) A tax-credit certificate that is revoked by the Minister of Finance and Treasury Board of the Province is considered never to have been issued.

(9) A qualifying venture capital fund that intends to raise equity capital and apply for tax-credit certificates on behalf of its eligible investors shall apply to the Minister of Finance and Treasury Board of the Province and the Minister of Finance and Treasury Board of the Province may approve the raising of equity capital subject to any conditions that the Minister of Finance and Treasury Board of the Province may determine or that are established by the regulations.

(10) A qualifying venture capital fund that has made a raise of equity capital that was approved under subsection (9) may, on behalf of its eligible investors, apply to the Minister of Finance and Treasury Board of the Province in the manner and in the time prescribed by the regulations for a tax-credit certificate entitling each of the eligible investors who has made an eligible investment to a deduction under this Section.

(11) Where, in respect of a taxation year, an eligible investor has been issued a tax-credit certificate, the eligible investor may deduct from the tax otherwise payable under this Act for the taxation year an amount not exceeding the lesser of

- (a) the aggregate of the venture capital tax credit and any amount eligible for deduction under subsection (12); and
- (b) the maximum eligible investment multiplied by 15%.

(12) Where an eligible investor has been issued a tax-credit certificate and the amount of the venture capital tax credit exceeds the amount of tax payable by the eligible investor for the taxation year, the eligible investor may

- (a) carry forward and deduct any unused balance of the venture capital tax credit from tax otherwise payable by the eligible investor in any one or more of the eligible investor's seven subsequent taxation years; or

(b) carry back and deduct any unused balance of the venture capital tax credit from tax otherwise payable by the eligible investor in any one or more of the eligible investor's three previous taxation years that end on or after April 1, 2019,

if, in the taxation year to which the unused balance is carried back or forward, the aggregate amount deducted from tax otherwise payable does not exceed the product, for that taxation year, of the maximum eligible investment multiplied by 15%.

(13) Where in any year the Minister of Finance and Treasury Board of the Province considers that the total amount paid under subsections (11) and (12) will be greater than the annual maximum venture capital tax credit,

(a) the Minister of Finance and Treasury Board of the Province shall suspend further registrations of applicants as qualifying venture capital funds under subsection (5) for that year; and

(b) the Minister of Finance and Treasury Board of the Province may not approve, for the remainder of that year, the raising of additional equity capital under subsection (9).

(14) The Minister of Finance and Treasury Board of the Province may not register an applicant under subsection (5) or approve the raising of equity capital under subsection (9) if the registration or approval would be, in the opinion of the Minister of Finance and Treasury Board of the Province, contrary to the spirit and intent of this Act.

(15) The Minister of Finance and Treasury Board of the Province may not issue a tax-credit certificate if, in the opinion of the Minister of Finance and Treasury Board of the Province, the eligible investment to which the tax-credit certificate relates is an avoidance transaction as defined in Section 103.

(16) The Governor in Council may make regulations

(a) establishing the criteria for determining

(i) who is an eligible investor in a qualifying venture capital fund, and

(ii) what is an eligible investment in a qualifying venture capital fund;

(b) establishing the criteria that a qualifying venture capital fund must meet in order to be registered under subsection (5);

(c) establishing the criteria that a qualifying venture capital fund must meet to be approved to raise equity capital under subsection (9);

(d) respecting how funds may be used by a qualifying venture capital fund;

(e) respecting how and when funds from an equity capital raise that was approved under subsection (9) must be invested by a qualifying venture capital fund;

(f) respecting the holding period of an eligible investment;

(g) respecting the registration of qualifying venture capital funds and the grounds for revoking registrations;

(h) prescribing the manner and the time within which an applicant may apply for a tax-credit certificate;

(i) establishing the circumstances in which an eligible investor who has made a deduction under this Section is liable to pay to the Minister of Finance and Treasury Board of the Province an amount equal to the deduction;

(j) establishing the circumstances in which a qualifying venture capital fund or its general partner is jointly and severally liable for any liability incurred by an eligible investor for a deduction made by the eligible investor in respect of the qualifying venture capital fund;

(k) prescribing the amount of the annual maximum venture capital tax credit and the period to which the amount applies;

(l) prescribing the maximum eligible investment amount;

(m) establishing penalties for failure to comply with this Section or the regulations;

(n) requiring a corporation or limited partnership to supply information or documents respecting any matter required in assessing eligibility and compliance with this Section or the regulations;

(o) defining any word or expression used but not defined in this Section;

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

(17) A regulation made pursuant to this Section may be made retroactive to a date not earlier than April 1, 2019. 2019, c. 16, s. 3.

Labour-sponsored venture-capital tax credit

59 (1) In this Section,

“labour-sponsored venture-capital tax credit” means a credit in respect of a tax-credit certificate issued to a taxpayer pursuant to subsection 21(2) of the *Equity Tax Credit Act*;

“tax otherwise payable” means the amount that would, but for this Section, be the tax otherwise payable pursuant to this Act.

(2) Where, in respect of a taxation year, a taxpayer has been issued a tax-credit certificate pursuant to subsection 21(2) of the *Equity Tax Credit Act*, there must be deducted from the tax otherwise payable by that taxpayer pursuant to this Part in respect of that taxation year the lesser of

(a) the labour-sponsored venture-capital tax credit; and

(b) either

(i) \$525 for an investment made before January 1, 2005,

(ii) \$1,000 for an investment made after December 31, 2004, and before a date prescribed by the Governor in Council, or

(iii) \$2,000 for an investment made after the prescribed date.

(3) A taxpayer who is entitled to a deduction pursuant to this Section shall file, with the taxpayer's annual return for any taxation year in respect of which a deduction is claimed pursuant to this Section, a copy of the tax-credit certificate.

(4) Notwithstanding Section 79 and subsection 89(1), a taxpayer is not entitled to a deduction pursuant to this Section unless the taxpayer files a return

(a) within three years after the end of the taxation year to which the deduction pertains for eligible shares purchased on or before April 25, 1996; or

(b) within seven years after the end of the taxation year to which the deduction pertains for eligible shares purchased after April 25, 1996.

(5) For greater certainty, subsection 22(2) of the *Equity Tax Credit Act* applies for the purpose of this Section.

(6) The Governor in Council may make regulations prescribing dates for the purpose of this Section. 2000, c. 4, s. 61; 2004, c. 3, s. 27; 2005, c. 6, s. 17; 2007, c. 9, s. 20; 2016, c. 2, s. 4.

Subdivision n — Volunteer Firefighter and Volunteer Ground Search and Rescue Worker Tax Credit

Volunteer firefighter and ground search and rescue tax credit

60 (1) In this Section,

“fire chief” means the senior official within, and in charge of, a volunteer fire department;

“fire services” means services by an individual, employee or contractor related to the prevention or suppression of fires;

“volunteer fire department” means a volunteer fire department as defined in the regulations;

“volunteer firefighter” means a member of a volunteer fire department who meets the criteria set out in the regulations;

“volunteer ground search and rescue worker” means a person who meets the criteria set out in the regulations.

(2) Subject to subsection (3) or (4), an individual may deduct from tax otherwise payable under this Act the amount of

(a) \$250 for the 2007 taxation year;

(b) \$375 for the 2008 taxation year; and

(c) \$500 for the 2009 and subsequent taxation years.

(3) An individual may claim a deduction pursuant to this Section if the individual

(a) other than an individual that is a trust, was resident in the Province on December 31st of the taxation year, and includes an individual who died in the taxation year and was a resident of the Province on the day of death;

(b) was a volunteer firefighter for a minimum of six months during the period January 1st to December 31st in the taxation year in which the individual claims the deduction;

(c) has not received salary, wages or compensation or anything in lieu of salary, wages or compensation, other than reasonable reimbursement or allowance for expenses, from the volunteer fire department in respect of fire services provided to the volunteer fire department or their participation as a member of the volunteer fire department during the taxation year in which the individual claims the deduction;

(d) files with the individual's annual return for the taxation year in which the deduction is claimed documentation in a form satisfactory to the Minister; and

(e) is identified on a report filed by the fire chief of the volunteer fire department filed in accordance with this Section.

(4) An individual may claim a deduction pursuant to this Section if the individual

(a) other than an individual that is a trust, was resident in the Province on December 31st of the taxation year, and includes an individual who died in the taxation year and was a resident of the Province on the day of death;

(b) was a volunteer ground search and rescue worker for a minimum of six months during the period January 1st to December 31st in the taxation year in which the individual claims the deduction;

(c) has not received salary, wages or compensation or anything in lieu of salary, wages or compensation, other than reasonable reimbursement or allowance for expenses, in respect of ground search and rescue services; and

(d) files with the individual's annual return for the taxation year in which the deduction is claimed documentation in a form satisfactory to the Minister.

(5) Every fire chief of a volunteer fire department shall file a report with the Minister on or before January 31st of each year containing the information required by the regulations.

(6) Subject to subsection (7), the Minister shall pay to an individual the amount, if any, by which the deduction to which the individual is entitled under this Section for a taxation year exceeds the individual's tax payable under this Act for the taxation year calculated without reference to this Section.

(7) Where an individual is liable or about to become liable to make a payment to the Crown in right of Canada or the Crown in right of the Province or another province of Canada, the Minister may apply all or part of the amount referred to in subsection (6) to pay that liability.

(8) No amount may be deducted pursuant to this Section on a separate return of income filed pursuant to subsection 70(2) or 150(4) or paragraph 104(23)(d) or 128(2)(e) of the Federal Act.

(9) The Governor in Council may make regulations

- (a) prescribing forms;
- (b) respecting the information to be contained in the report to be filed by fire chiefs;
- (c) defining any word or expression used but not defined in this Section;
- (d) respecting any matter or thing that the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Section.

(10) A regulation made pursuant to this Section may be made retroactive in its operation to a date not earlier than January 1, 2007. 2007, c. 9, s. 21; 2008, c. 2, ss. 20, 21; 2016, c. 2, s. 4.

Subdivision o — Fertility and Surrogacy Tax Credit

Fertility and surrogacy tax credit

61 (1) For a taxation year ending after December 31, 2021, an individual may claim a tax credit for a fertility or surrogacy medical expense in the amount determined by the formula

$$A \times B$$

where

- A is 40%; and
- B is the least of
 - (a) \$20,000;
 - (b) the total of all amounts each of which is an amount paid in the taxation year by the individual, or by the individual's spouse or common-law partner, that is a medical expense for
 - (i) fertility in respect of the individual or the individual's spouse or common-law partner, or
 - (ii) surrogacy to enable the individual to become a parent,
 that has not otherwise been reimbursed; and
 - (c) zero, where a claim under this subsection for the taxation year has been made by the individual's spouse or common-law partner.

- (2) The Governor in Council may make regulations
- (a) prescribing the eligibility criteria for the tax credit;
 - (b) defining any word or expression used in this Section;
 - (c) respecting any other matter that the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Section.

(3) A regulation made pursuant to this Section may be made retroactive to a day not earlier than January 1, 2022. 2022, c. 35, s. 2.

Subdivision p — Children’s Sports and Arts Tax Credit

Children’s sports and arts tax credit

62 (1) In this Section,

“artistic, cultural, recreational or developmental activity” means a supervised activity, other than a physical activity, that is suitable for children and

(a) is intended to contribute to a child’s ability to develop creative skills or expertise, acquire and apply knowledge, or improve dexterity or coordination, in an artistic or cultural discipline including

- (i) literary arts,
- (ii) visual arts,
- (iii) performing arts,
- (iv) music,
- (v) media,
- (vi) languages,
- (vii) customs, and
- (viii) heritage;

(b) provides a substantial focus on wilderness and the natural environment;

(c) assists with the development and use of intellectual skills; or

(d) includes structured interaction among children where supervisors teach or assist children to develop interpersonal skills;

“eligible expense” in respect of a qualifying child of an individual for a taxation year means the amount of a fee paid to a qualifying entity, other than an amount paid to a person who is, at the time the amount is paid, the individual’s spouse or common-law partner or another individual who is under the age of 18 years, to the extent that the fee is attributable to the cost of registration or membership of the qualifying child in an eligible program or membership in an eligible organization and, for this purpose, that cost

(a) includes the cost to the qualifying entity of the program in respect of its administration, instruction, rental of required facilities, and uniforms and equipment that are not available to be acquired by a participant in the program for an amount less than their fair market value at the time, if any, they are so acquired; and

(b) does not include

(i) the cost of accommodation, travel, food or beverages,

(ii) any amount deductible in computing any person's income for any taxation year, or

(iii) any amount included in computing a deduction from any person's tax payable under any Part of this Act, for any taxation year;

“eligible program” means a program of artistic, cultural, recreational or developmental activity or physical activity that is any of the following:

(a) a weekly program of a duration of six or more consecutive weeks in which all or substantially all of the activities include a significant amount of artistic, cultural, recreational or developmental activity or physical activity;

(b) a program of a duration of five or more consecutive days in which more than 50% of the daily activities include a significant amount of artistic, cultural, recreational or developmental activity or physical activity;

(c) a program of a duration of eight or more consecutive weeks offered to children by an organization in circumstances where a participant may select from a variety of activities offered as part of the program, and more than 50% of

(i) the activities offered to children include a significant amount of artistic, cultural, recreational or developmental activity or physical activity, or

(ii) the time scheduled for the activities offered to children is for activities that include a significant amount of artistic, cultural, recreational or developmental activity or physical activity;

“organization” means a club, association or similar organization;

“physical activity” means a supervised activity suitable for children, other than an activity where a child rides on or in a motorized vehicle as an essential component of that activity, that

(a) in the case of a qualifying child in respect of whom an amount is deductible under section 118.3 of the Federal Act in computing any individual's income for the taxation year, results in movement and in an observable expenditure of energy in a recreational context; and

(b) in the case of any other qualifying child, contributes to cardio-respiratory endurance and to one or more of the following:

- (i) muscular strength,
- (ii) muscular endurance,
- (iii) flexibility,
- (iv) balance;

“qualifying child” in respect of an individual for a taxation year means a child of the individual who is under 19 years of age at the end of the taxation year;

“qualifying entity” means a person or partnership that offers one or more eligible programs of artistic, cultural, recreational or developmental activity or physical activity.

(2) For the purpose of the definition of “physical activity”, horse-back riding is considered to be an activity that contributes to cardio-respiratory endurance and to one or more of muscular strength, muscular endurance, flexibility and balance.

(3) An individual who

- (a) is resident in the Province at the end of the taxation year;
- (b) files a return of income for a taxation year; and
- (c) makes a claim under this Section,

is considered to have paid, at the end of the year, on account of tax payable under this Section for the year, an amount equal to the amount determined by the formula

$$A \times B$$

where

A is the appropriate percentage for the year; and

B is the total of all amounts each of which is, in respect of an individual for the year, the lesser of \$500 and the amount determined by the formula

$$C - D$$

where

C is the total of all amounts each of which is an amount paid in the taxation year by the individual, or by the individual’s spouse or common-law partner, that is an eligible expense for an artistic, cultural, recreational or developmental activity or a physical activity in respect of the qualifying child of the individual; and

D is the total of all amounts that any individual is or was entitled to receive, each of which relates to an amount included in computing the value of C in respect of the qualifying child, that is the amount of a reimbursement, allowance or any other form of assistance, other than an amount that is included in computing the income for any taxation year of that individual and that is not deductible in computing the taxable income of that individual.

(4) Where more than one individual is entitled to a deduction under subsection (3) in respect of the same qualifying child,

(a) the total of all amounts so deductible for the year may not exceed the maximum amount that would be so deductible for the year by any one of those individuals for that qualifying child if that individual were the only individual entitled to deduct an amount for the year because of that subsection for the qualifying child; and

(b) where the individuals cannot agree as to what portion of the amount each can so deduct, the Minister may fix the portions.

(5) An individual who becomes bankrupt in a calendar year is entitled to claim, for each taxation year that ends in the calendar year, only the amounts that the individual is entitled to claim for the taxation year, except that the sum of all amounts that may be claimed under this Section for all taxation years of the individual ending in the calendar year may not exceed the total amount that the individual would have been entitled to claim in respect of the calendar year if the individual had not become bankrupt.

(6) An individual who is resident in Canada for only part of a taxation year is entitled to claim for the year only the amount the individual would be entitled to claim for the year under this Section that can reasonably be considered wholly applicable to any period in the year throughout which the individual was resident in Canada, computed as though that period were the whole taxation year, except that the amount that may be claimed under this Section may not exceed the amount that the individual would have been entitled to claim under this Section if the individual had been resident in Canada throughout the year.

(7) The Governor in Council may make regulations

(a) establishing criteria to define eligible programs and qualified entities;

(b) defining, expanding or restricting the meaning of any word or expression used but not defined in this Section;

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

(8) A regulation made pursuant to this Section may be made retroactive to a day not earlier than January 1, 2022. 2022, c. 4, s. 3.

Subdivision q — Capital Gains Refund to Mutual Fund Trust

Capital gains refund to mutual fund trust

63 (1) Where an amount is to be refunded to a trust in respect of a taxation year pursuant to section 132 of the Federal Act, the Minister shall, subject to subsection (2), at such time and in such manner as is provided in that section, refund to the trust an amount, in this Section referred to as its “capital gains refund” for the year, equal to the amount obtained by multiplying the provincial percentage for the year times the amount of the refund for the year calculated under subsection 132(1) of the Federal Act.

(2) For the purpose of computing the capital gains refund under subsection (1) for a trust in respect of a taxation year, where the trust had income earned in the taxation year outside the Province, the refund is that proportion of the capital gains refund for the year, otherwise determined under subsection (1), that the trust's income earned in the taxation year in the Province is of its income for the year.

(3) Instead of making a refund that might otherwise be made under subsection (1), the Minister may, where the trust is liable or about to become liable to make any payment under this Act, apply the amount that would otherwise be refunded to that other liability and notify the trust of that action. 2000, c. 4, s. 61; 2001, c. 3, s. 11; 2005, c. 6, s. 18.

DIVISION C — COMPUTATION OF TAX FOR CORPORATIONS

Subdivision a — Computation of Tax

Tax payable by corporation

64 (1) The tax payable by a corporation under this Part for a taxation year is the corporation's taxable income earned in the year multiplied by the total of

(a) that proportion of 16% that the number of days in the taxation year that are before April 1, 2020, is of the number of days in the taxation year; and

(b) that proportion of 14% that the number of days in the taxation year that are on or after April 1, 2020, is of the number of days in the taxation year.

(2) Notwithstanding subsection (1), where in a taxation year a corporation is eligible for a deduction under subsection 125(1) of the Federal Act, the tax payable by that corporation under this Part for that taxation year is equal to the amount determined by the formula

$$(A \times B \times C/D) + (E \times (C - (B \times C/D)))$$

where

A is the rate of tax set out in subsection (7) that applies to the proportion that the number of days in the taxation year that are in the period is of the number of days in the taxation year;

B is the least of the amounts determined pursuant to paragraphs 125(1)(a) to (c) of the Federal Act in respect of the corporation for the taxation year;

C is the corporation's taxable income earned in the year in the Province;

D is the corporation's taxable income earned in the year in a province; and

E is the rate applicable in subsection (1).

(3) For the purpose of this Division,

“taxable income earned in the year in the Province” of a corporation means its taxable income earned in the year in the Province as determined in accordance with Federal Regulations made for the

purpose of the definition “taxable income earned in the year in a province” in subsection 124(4) of the Federal Act; and

“taxable income earned in the year in a province” is the amount determined for the corporation for the taxation year for the purpose of the definition “taxable income earned in the year in a province” in subsection 124(4) of the Federal Act.

(4) For the purpose of subsection (2), where a corporation is a member of a partnership, the amount determined pursuant to paragraph 125(1)(a) of the Federal Act, in relation to a corporation for each taxation year, is the amount that would be the corporation’s specified partnership income within the meaning of subsection 125(7) of the Federal Act if the amounts expressed in dollars in the description of “M” in the definition of “specified partnership income” in that subsection were read as

(a) for the first amount, “\$350,000” and, for the second amount, “\$959” for the period commencing on April 1, 2005, and ending on March 31, 2006;

(b) for the first amount, “\$400,000” and, for the second amount, “\$1,096” for the period commencing on April 1, 2006, and ending on December 31, 2013;

(c) for the first amount, “\$350,000” and, for the second amount, “\$959” for the period commencing on January 1, 2014, and ending on December 31, 2016; and

(d) for the first amount, “\$500,000” and, for the second amount, “\$1,370” for the period commencing on January 1, 2017.

(5) The business limit otherwise determined under section 125 of the Federal Act is deemed for the purpose of subsection (2) to be \$350,000 for the period commencing on April 1, 2005.

(6) Notwithstanding subsection (5), the business limit otherwise determined under section 125 of the Federal Act is deemed for the purpose of subsection (2) to be

(a) \$400,000 for the period commencing on April 1, 2006, and ending on December 31, 2013;

(b) \$350,000 for the period commencing on January 1, 2014, and ending on December 31, 2016; and

(c) \$500,000 for the period commencing on January 1, 2017.

(7) For the purpose of subsection (2), the rate of tax A is

(a) 5% for the period ending December 31, 2010;

(b) 4.5% for the period commencing on January 1, 2011, and ending on December 31, 2011;

(c) 4% for the period commencing on January 1, 2012, and ending on December 31, 2012;

(d) 3.5% for the period commencing on January 1, 2013, and ending on December 31, 2013;

(e) 3% for the period commencing on January 1, 2014, and ending on March 31, 2020; and

(f) 2.5% for the period commencing on April 1, 2020. 2000, c. 4, s. 61; 2005, c. 6, s. 19; 2010, c. 3, s. 7; 2011, c. 8, s. 9; 2012, c. 4, s. 2; 2013, c. 3, s. 8; 2017, c. 6, s. 22; 2020, c. 2, s. 4.

Subdivision b — Research and Development Tax Credit

Research and development tax credit

65 (1) In this Section,

(a) “eligible expenditure” means an expenditure made after 1983 by a corporation with a permanent establishment in the Province in respect of scientific research to be carried out in the Province that is a qualified expenditure under subsection 127(9) of the Federal Act,

(i) without reference to paragraphs 127(9)(d) and (h) of the Federal Act after December 31, 1999, and before April 11, 2000, and

(ii) without reference to paragraph 127(9)(d) of the Federal Act after April 10, 2000,

and, for greater certainty, for the purpose of this clause and paragraph 127(9)(h) of the Federal Act, the reference to “government assistance” in subsections 127(18) to (20) of the Federal Act does not include the research and development tax credit determined pursuant to this Section;

(b) “research and development tax credit” of a corporation at the end of a taxation year for expenditures made in a taxation year ending on or before December 31, 1993, means the amount, if any, by which the aggregate of

(i) an amount equal to 10% of the aggregate of all amounts each of which is an eligible expenditure made by it in the year, computed without reference to subsection 13(7.1) of the Federal Act,

(ii) an amount equal to 10% of the aggregate of all amounts each of which is an eligible expenditure made by it in any of the seven taxation years immediately preceding or the three taxation years immediately following that year, computed without reference to subsection 13(7.1) of the Federal Act,

(iii) an amount equal to the aggregate of all amounts each of which is an amount required by subsection (6) or (8) to be included in computing its research and development tax credit at the end of the year, and

(iv) the aggregate of all amounts each of which is an amount required by subsection (6) or (8) to be included in computing its research and development tax credit at the end of any of the seven taxation years immediately preceding or the three taxation years immediately following that year,

exceeds the aggregate of all amounts each of which is that portion of the amount deducted under subsection (2) from the tax otherwise payable under this Act by the corporation for a preceding taxation year that is in respect of an expenditure made in the year or in the seven taxation years immediately preceding or the two taxation years immediately following the year;

(c) “research and development tax credit” of a corporation at the end of a taxation year for expenditures made in a taxation year ending after December 31, 1993, means the amount that is the aggregate of

(i) an amount equal to 15% of the aggregate of all amounts each of which is an eligible expenditure made by it in the year, computed without reference to subsection 13(7.1) of the Federal Act, and

(ii) an amount equal to the aggregate of all amounts each of which is an amount required by subsection (6) or (8) to be included in computing its research and development tax credit at the end of the year.

(2) A corporation may deduct from the tax otherwise payable under this Act for a taxation year an amount not exceeding the lesser of

(a) its research and development tax credit at the end of the year; and

(b) its tax otherwise payable by it under this Act for the year.

(3) The amount by which the research and development tax credit referred to in clause (1)(c) to which a corporation is entitled exceeds the corporation’s tax payable pursuant to this Act for the taxation year, calculated without reference to this Section, may be applied by the Minister of Finance to pay any

(a) tax, interest or penalty owing by the corporation for that or any prior taxation year pursuant to this Act, the income statute of any agreeing province or the Federal Act;

(b) contribution, penalty or interest owing by the corporation for that or any prior taxation year as a result of payments required from the corporation pursuant to the *Canada Pension Plan*;

(c) premium, interest or penalty owing by the corporation for that or any prior taxation year pursuant to the *Employment Insurance Act* (Canada),

and the part of the amount not so applied must be paid to the corporation.

(4) For greater certainty, a corporation referred to in subsection (3) does not include a corporation that is exempt from tax pursuant to section 149 of the Federal Act.

(5) There is deemed to have been paid on account of tax payable under the Federal Act by a taxpayer, other than a taxpayer exempt from tax, for a taxation year, where the taxpayer is a corporation, on the day referred to in paragraph 157(1)(b) of the Federal Act on or before which the remainder of the taxes

payable under this Part for the year by the taxpayer would be required to be paid if such a remainder were payable, the amount, if any, by which

(a) the taxpayer's tax credit calculated under subsection (1) for the year,

exceeds

(b) the amount deducted, pursuant to subsection (2), in computing the taxpayer's tax payable under this Part for the year.

(6) Where in a particular taxation year of a corporation that is a beneficiary under a trust, an amount would, if the trust were a corporation, be, by virtue of subclause (1)(b)(i) or (c)(i), included in computing the research and development tax credit of the trust for its taxation year ending in that particular taxation year, the portion of that amount that may, having regard to all the circumstances, including the terms and conditions of the trust, reasonably be considered to be the corporation's share thereof must be included in computing the research and development tax credit of the corporation at the end of that particular taxation year.

(7) A corporation may renounce the research and development tax credit in respect of eligible expenditures incurred during the year on or before the time on or before which the corporation is required to file its return of income for the year pursuant to section 150 of the Federal Act and, where the corporation so renounces entitlement to that credit, the corporation is deemed for all purposes never to have received, to have been entitled to receive or to have had a reasonable expectation of receiving that credit.

(8) Where in a particular taxation year of a corporation that is a member of a partnership, an amount would, if the partnership were a corporation, be, by virtue of subclause (1)(b)(i) or (c)(i), included in computing the research and development tax credit of the partnership for its taxation year ending in that particular taxation year, the portion of that amount that may reasonably be considered to be the corporation's share thereof must be included in computing the research and development tax credit of the corporation at the end of that particular taxation year.

(9) Where after 1983 two or more corporations amalgamate within the meaning of subsection 87(1) of the Federal Act and one or more of the corporations had a research and development tax credit for any taxation year any portion of which was not deducted by it in computing its tax otherwise payable under this Act for any taxation year, for the purpose of determining the research and development tax credit of the new corporation for any taxation year preceding any taxation year of the new corporation, the new corporation is deemed to be the same corporation as and a continuation of each such predecessor corporation.

(10) Where after 1983

(a) a subsidiary, within the meaning of subsection 88(1) of the Federal Act, is wound up and subsection 88(1) of the Federal Act applies to the winding-up; and

(b) the subsidiary had a research and development tax credit for any taxation year any portion of which was not deducted by it in computing its tax otherwise payable under this Act for any taxation year,

for the purpose of applying this Section, the parent, within the meaning of subsection 88(1) of the Federal Act, is deemed to be the same corporation as, and a continuation of, the subsidiary.

(11) Where

(a) a corporation acquired a particular property from a person or partnership in a taxation year of the corporation or in any of the four preceding taxation years;

(b) the cost of the particular property was an eligible expenditure to the corporation;

(c) the cost of the particular property is included in an amount, a percentage of which can reasonably be considered to be included in computing the corporation's research and development tax credit at the end of the taxation year; and

(d) in the year and after March 31, 2002, the corporation converts to commercial use, or disposes of without having previously converted to commercial use, the particular property or another property that incorporates the particular property,

there must be added to the corporation's tax otherwise payable under this Part for the year the lesser of the amount that can reasonably be considered to be included in computing the corporation's research and development tax credit in respect of the particular property and the amount that is the percentage, described in clause (c), of

(e) where the particular property or the other property is disposed of to a person who deals at arm's length with the corporation, the proceeds of disposition of that property; and

(f) in any other case, the fair market value of the particular property or the other property at the time of the conversion or disposition.

(12) Where a corporation is a member of a partnership that has received a research and development tax credit under subsection (8) at the end of a particular fiscal period and where

(a) a particular property, the cost of which is an eligible expenditure, is acquired by the partnership from a person or partnership in the particular fiscal period or in any of the four preceding fiscal periods of the partnership;

(b) the cost of the particular property was included in an amount, a percentage of which can reasonably be considered to have been included in computing the amount determined under subsection (8) in respect of the partnership at the end of a fiscal period; and

(c) in the particular fiscal period and after March 31, 2002, the partnership converts to commercial use, or disposes of without having previously converted to commercial use, the particular property or another property that incorporates the particular property,

there must be added to the corporation's tax otherwise payable under this Part at the end of the particular fiscal period the corporation's share of, as a member of the partnership, the lesser of

(d) the amount that can reasonably be considered to have been included in respect of the particular property in computing the amount determined under subsection (8) in respect of the partnership; and

(e) the percentage, described in clause (b), of

(i) where the particular property or the other property is disposed of to a person who deals at arm's length with the partnership, the proceeds of disposition of that property, and

(ii) in any other case, the fair market value of the particular property or the other property at the time of the conversion or disposition.

(13) Where

(a) a corporation acquired a particular property from a person or partnership in a taxation year or in any of the four preceding taxation years;

(b) the cost of the particular property was an eligible expenditure to the corporation;

(c) all or part of the eligible expenditure can reasonably be considered to have been the subject of an agreement made under subsection 127(13) of the Federal Act by the corporation and another corporation, in this subsection referred to as the "transferee"; and

(d) in the year and after March 31, 2002, the corporation converts to commercial use, or disposes of without having previously converted to commercial use, the particular property or another property that incorporates the particular property,

there must be added to the corporation's tax otherwise payable under this Part for the year the lesser of

(e) the amount that can reasonably be considered to have been included in computing the transferee's research and development tax credit in respect of the eligible expenditure that was the subject of the agreement; and

(f) the amount determined by the formula

$$A \times B - C$$

where

A is the percentage applied by the transferee in determining its research and development tax credit in respect of the eligible expenditure that was the subject of the agreement,

B is

(i) where the particular property or the other property is disposed of to a person who deals at arm's length with the corporation, the proceeds of disposition of that property, and

(ii) in any other case, the fair market value of the particular property or the other property at the time of the conversion or disposition, and

C is the amount, if any, added to the corporation's tax payable under subsection (11) in respect of the particular property.

(14) For the purpose of subsections (11) to (13), "cost of the particular property" to a corporation may not exceed the amount paid by the corporation to acquire the particular property from a transferor of the particular property and, for greater certainty, does not include amounts paid by the corporation to maintain, modify or transform the particular property.

(15) Subsections (11) to (13) and (16) to (19) do not apply to a corporation or a partnership, in this subsection referred to as the "transferor", that disposes of a property to another person or a partnership, in this subsection and subsections (16) to (19), referred to as the "purchaser", that does not deal at arm's length with the transferor, if the purchaser acquired the property in circumstances described under subsection 127(33) of the Federal Act.

(16) Where, at any particular time in a taxation year and after March 31, 2002, a purchaser, other than a partnership, converts to commercial use, or disposes of without having previously converted to commercial use, a property

(a) that was acquired by the purchaser in circumstances described in subsection (15) or that is another property that incorporates a property acquired in such circumstances; and

(b) that was first acquired, or that incorporates a property that was first acquired, by a corporation, in this subsection referred to as the "original user", with which the purchaser did not deal at arm's length at the time at which the purchaser acquired the property, in the original user's taxation year or fiscal period that includes the particular time, on the assumption that the original user had such a taxation year or fiscal period, or in any of the original user's four preceding taxation years or fiscal periods,

there must be added to the purchaser's tax otherwise payable under this Part for the year the lesser of

(c) the amount included, in respect of the property, in the research and development tax credit of the original user; and

(d) the amount determined by applying the percentage that was applied in computing the research and development tax credit referred to in clause (c) by the corporation that was the original user, to

(i) where the property or the other property is disposed of to a person who deals at arm's length with the purchaser, the proceeds of disposition of that property, and

(ii) in any other case, the fair market value of the property or the other property at the time of the conversion or disposition.

(17) Where, at any particular time in a taxation year and after March 31, 2002, a purchaser, other than a partnership, converts to commercial use, or disposes of without having previously converted to commercial use, a property

(a) that was acquired by the purchaser in circumstances described in subsection (15) or that is another property that incorporates a property acquired in such circumstances; and

(b) that was first acquired, or that incorporates a property that was first acquired, by a partnership, in this subsection referred to as the “original user”, with which the purchaser did not deal at arm’s length at the time at which the purchaser acquired the property, in the original user’s taxation year or fiscal period that includes the particular time, on the assumption that the original user had such a taxation year or fiscal period, or in any of the original user’s four preceding taxation years or fiscal periods,

there must be added to the purchaser’s tax otherwise payable under this Part for the year the lesser of

(c) the amount that can reasonably be considered to have been included in respect of the property in computing the research and development tax credit under subsection (8) in respect of all the corporations that were members of the original user; and

(d) the amount determined by applying the percentage that was applied in computing the research and development tax credit referred to in clause (c), times the proportion of that research and development tax credit that was utilized by the corporations that were members of the original user was of the total research and development tax credit calculated as if the original user was a corporation, to

(i) where the property or the other property is disposed of to a person who deals at arm’s length with the purchaser, the proceeds of disposition of that property, and

(ii) in any other case, the fair market value of the property or the other property at the time of the conversion or disposition.

(18) Where, at any particular time in a taxation year and after March 31, 2002, a purchaser is a partnership that converts to commercial use, or disposes of without having previously converted to commercial use, a property

(a) that was acquired by the purchaser in circumstances described in subsection (15) or that is another property that incorporates a property acquired in such circumstances; and

(b) that was first acquired, or that incorporates a property that was first acquired, by a corporation, in this subsection referred to as the “original user”, with which the purchaser did not deal at arm’s length at the time at which the purchaser acquired the property, in the original user’s taxation year or fiscal period that includes the particular time, on the assumption that the original user had such a taxation year or fiscal period, or in any of the original user’s four preceding taxation years or fiscal periods,

there must be added to the tax otherwise payable under this Part for the year, for each member of the partnership that is the purchaser, the portion that may reasonably be considered to be the partner's share of the lesser of

(c) the amount included, in respect of the property, in the research and development tax credit of the original user; and

(d) the amount determined by applying the percentage that was applied in computing the research and development tax credit referred to in clause (c) to

(i) where the property or the other property is disposed of to a person who deals at arm's length with the purchaser, the proceeds of disposition of that property, and

(ii) in any other case, the fair market value of the property or the other property at the time of the conversion or disposition.

(19) Where, at any particular time in a taxation year and after March 31, 2002, a purchaser is a partnership that converts to commercial use, or disposes of without having previously converted to commercial use, a property

(a) that was acquired by the purchaser in circumstances described in subsection (15) or that is another property that incorporates a property acquired in such circumstances; and

(b) that was first acquired, or that incorporates a property that was first acquired, by a partnership, in this subsection referred to as the "original user", with which the purchaser did not deal at arm's length at the time at which the purchaser acquired the property, in the original user's taxation year or fiscal period that includes the particular time, on the assumption that the original user had such a taxation year or fiscal period, or in any of the original user's four preceding taxation years or fiscal periods,

there must be added to the tax otherwise payable under this Part for the year, for each member of the partnership that is the purchaser, the portion that may reasonably be considered to be the partner's share of the lesser of

(c) the amount that can reasonably be considered to have been included in respect of the property in computing the research and development tax credit under subsection (8) in respect of all the corporations that were members of the original user; and

(d) the amount determined by applying the percentage that was applied in computing the research and development tax credit referred to in clause (c), times the proportion of that research and development tax credit that was utilized by the corporations that were members of the original user was of the total research and development tax credit calculated as if the original user was a corporation, to

(i) where the property or the other property is disposed of to a person who deals at arm's length with the purchaser, the proceeds of disposition of that property, and

(ii) in any other case, the fair market value of the property or the other property at the time of the conversion or disposition.

(20) A qualifying corporation that wishes to claim a tax credit under this Part in respect of a taxation year shall file, with the return of income filed by the corporation under Section 80 for that taxation year, an application for the tax credit in the form, and containing the information, required by the Commissioner of Revenue.

(21) A qualifying corporation is not entitled to a tax credit under this Part in relation to its eligible expenditure in a taxation year unless, within 18 months after the end of the taxation year, the corporation files the form containing the information required under subsection (20). 2000, c. 4, s. 61; 2001, c. 3, s. 12; 2002, c. 5, s. 27; 2003, c. 4, s. 20; 2005, c. 6, s. 20; 2014, c. 33, s. 11; 2021, c. 6, s. 27.

Subdivision c — Nova Scotia Corporate Tax Holiday

Corporate tax holiday

66 (1) In this Section,

“active business” has the meaning assigned to the expression “active business carried on by a corporation” in subsection 125(7) of the Federal Act;

“Minister” means the Minister of Finance and Treasury Board of the Province.

(2) The Minister may delegate to an employee of the Department of Finance and Treasury Board for the Province any duty or responsibility assigned to the Minister pursuant to this Section.

(3) There may be deducted from the tax otherwise payable pursuant to this Part, for the first, second and third taxation years of a corporation or an association, as defined in the *Co-operative Associations Act*, that was incorporated after April 24, 1992, pursuant to the laws of the Province, another province of Canada or Canada or by a special Act of the Legislature, an amount equal to the applicable percentage referred to in the description of A in the formula in subsection 64(2) of the amount determined pursuant to subsection (4) for the taxation year, if the corporation is eligible to claim, with respect to the taxation year, a deduction pursuant to subsection 125(1) of the Federal Act.

(4) For the purpose of subsection (3), the amount determined pursuant to this subsection for a taxation year is that proportion of the least of the amounts determined pursuant to paragraphs 125(1)(a), (b) and (c) of the Federal Act for the taxation year, that

(a) its taxable income earned in the year in the Province,

is of

(b) its taxable income earned in the year in a province.

(5) Notwithstanding subsection (3), a corporation is not eligible for a deduction pursuant to subsection (3) for a taxation year if it, or any predecessor corporation thereof, within the meaning of section 87 of the Federal Act, at any time since the date of its incorporation

(a) was associated with any other corporation within the meaning of section 256 of the Federal Act, unless the Minister has

waived this restriction with respect to such association with the other corporation;

(b) carried on an active business by reason of being a member of a partnership, where any other member of the partnership was not eligible for a deduction pursuant to subsection (3) for the taxation year;

(c) was a beneficiary of a trust, if any other beneficiary of the trust was not eligible for a deduction pursuant to subsection (3) for the taxation year;

(d) carried on an active business by reason of being a co-venturer in a joint venture, if any other co-venturer in the joint venture was not eligible for a deduction pursuant to subsection (3) for the taxation year;

(e) has carried on an active business by reason of having acquired, by purchase or otherwise, or leased property from another corporation, hereinafter referred to as the “vendor”, in respect of which it, any of its shareholders, or any persons related to it or its shareholders, beneficially owned at any time, directly or indirectly, more than 10% of the issued shares of any class of the capital stock of the vendor; or

(f) has carried on an active business by reason of having acquired, by purchase or otherwise, or leased property from a sole proprietorship or partnership, hereinafter referred to as the “vendor”, in respect of which it, any of its shareholders, or any persons related to it or its shareholders beneficially owned the vendor.

(6) Notwithstanding subsection (3), a corporation is not eligible for a deduction pursuant to subsection (3) for the taxation year if, prior to incorporation, the same or substantially the same business activity was carried on as a sole proprietorship, partnership or corporation, whether registered as such or not.

(7) Notwithstanding subsection (6), where the same or substantially the same business activity was carried on as a sole proprietorship or partnership, whether registered as such or not, for a period of 90 days or less prior to the date of incorporation, the corporation may apply to the Minister for a certificate of eligibility.

(8) A corporation is not entitled to a deduction pursuant to subsection (3) for the taxation year if, as a result of a transaction or an event, or a series of transactions or events, property of a business has been transferred, or has been deemed to have been transferred, either directly or indirectly, to the corporation, and it is reasonable for the Minister to believe that one of the principal purposes of the transfer or deemed transfer is to enable the corporation to claim a deduction from tax pursuant to subsection (3) that it could not otherwise claim.

(9) A corporation is not entitled to a deduction pursuant to subsection (3) for the taxation year where, as a result of a disposition, a deemed disposition or a series of dispositions of shares of any corporation, it is reasonable for the Minister to believe that one of the principal purposes of the disposition or deemed disposition is to enable the corporation to claim a deduction from tax pursuant to subsection (3) that it could not otherwise claim.

(10) For greater certainty, this Section does not apply to a business incorporated for the professional practice of an accountant, dentist, lawyer, medical doctor, veterinarian or chiropractor.

(11) To be eligible for a tax deduction pursuant to this Section, a corporation shall apply to the Minister for a certificate of eligibility which the corporation shall file with its income tax return.

(12) A corporation incorporated pursuant to the laws of a province or Canada is not entitled to the deduction pursuant to this Section unless at least 25% of the wages and salaries paid by the corporation in the taxation year are paid to employees who are resident in the Province and the corporation's head office is located in the Province.

(13) The Governor in Council may make regulations

(a) prescribing the terms and conditions of eligibility of a corporation for the deduction, in addition to any eligibility requirements set out in this Section;

(b) determining the order in which a corporation is required to take the deduction provided for in this Section;

(c) respecting the time limits within which an application for the deduction is to be made by a corporation. 2000, c. 4, s. 61; 2001, c. 3, s. 13; 2007, c. 9, s. 22; 2014, c. 34, s. 16.

Subdivision d — Foreign Tax Deduction

Foreign tax deduction

67 Where the income for a taxation year of a corporation that maintained a permanent establishment in the Province at any time in the taxation year includes income described in subparagraph 126(1)(b)(i) of the Federal Act from sources in a country other than Canada, in this Section referred to as “foreign investment income”, and where the corporation may claim a deduction under subsection 126(1) of the Federal Act in respect of the foreign investment income, the corporation may deduct from the tax for the year otherwise payable under this Act an amount equal to the lesser of

(a) 16% of the product of

(i) the foreign investment income of the corporation for the year from sources in the country,

and

(ii) that proportion that the corporation's taxable income earned in the year in the Province is of the corporation's taxable income earned in the year; and

(b) that proportion of the amount by which such part of any non-business-income tax paid by the corporation for the year to the government of a country other than Canada, except any such tax or part thereof that may reasonably be regarded as having been paid in respect of income from a share of the capital stock of a foreign affiliate of the corporation, exceeds the amount deductible by the corporation under subsection 126(1) of the Federal Act that

- (i) the corporation's taxable income earned in the year in the Province,
- is of
- (ii) the corporation's taxable income earned in the year in a province. 2000, c. 4, s. 61; 2005, c. 6, s. 21.

Subdivision e — Capital Gains Refund to Mutual Fund Corporation

Capital gains refund to mutual fund corporation

68 (1) Where an amount is to be refunded to a corporation in respect of a taxation year, pursuant to section 131 of the Federal Act, the Minister shall, subject to subsection (2), at such time and in such manner as is provided in that section, refund to the corporation an amount, in this Section referred to as its "capital gains refund" for the year, equal to that proportion of the amount of the refund for the year calculated under subsection 131(2) of the Federal Act that

- (a) the percentage referred to in subsection 64(1) for the year,
- is of
- (b) the percentage referred to in paragraph (b) of the description of A in the formula in the definition "refundable capital gains tax on hand" in subsection 131(6) of the Federal Act.

(2) For the purpose of computing the capital gains refund under subsection (1) for a corporation in respect of a taxation year, where

- (a) the corporation's taxable income earned in the year in the Province,
- is less than
- (b) the corporation's taxable income for the year,
- the refund is that proportion of the capital gains refund for the year, otherwise determined under subsection (1), that the amount determined under clause (a) is of the amount determined under clause (b).

(3) Subsection 131(3) of the Federal Act applies for the purpose of this Act. 2000, c. 4, s. 61.

Subdivision f — ISO9000 Certification

Tax Credit for ISO9000 certification expenditure prior to 2001

- 69 (1)** In this Section,
- "eligible expenditure" means an expenditure made after 1993 and before January 1, 2001, by a corporation with a permanent establishment in the Province with respect to audit, training and documentation expenses necessary for the corporation to become ISO9000 certified;
- "Minister" means the Minister of Finance and Treasury Board of the Province.

(2) A corporation that has made eligible expenditures in a taxation year may apply to the Minister of Finance, at the time and in the manner prescribed by the Minister of Finance, for a tax credit equal to 25% of the lesser of

- (a) the amount of eligible expenditures made in the taxation year; and
- (b) \$150,000.

(3) Where the Minister is satisfied that a corporation is entitled to a tax credit pursuant to this Section, the Minister shall, at the time and in the manner prescribed by the Minister, issue a tax credit certificate to the corporation.

(4) Where a corporation files with its return of income for a taxation year a tax credit certificate issued by the Minister of Finance pursuant to subsection (3), the corporation may deduct from the tax otherwise payable by the corporation under this Act the amount of the tax credit indicated on the tax credit certificate.

(5) The Governor in Council may make regulations

- (a) prescribing forms for the purpose of this Section;
- (b) governing any matter that may be prescribed pursuant to this Section;
- (c) requiring a corporation to supply information or documents respecting any matter required in assessing compliance with this Section;
- (d) respecting those expenditures that qualify as eligible expenditures for the purpose of this Section;
- (e) defining any word used but not defined in this Section;
- (f) to carry out effectively the intent and purpose of this Section. 2000, c. 4, s. 61; 2014, c. 34, s. 17.

Subdivision g — Prospectus Filing Expenses

Tax credit for prospectus filing expenses prior to 2000

70 (1) In this Section,

“eligible expenditure” means an expenditure made after 1994 and before 2000 by a corporation with a permanent establishment in the Province with respect to audit, legal and printing expenses necessary for the corporation to file a prospectus pursuant to the *Securities Act* or a stock exchange as prescribed by regulation;

“Minister” means the Minister of Finance and Treasury Board of the Province.

(2) A corporation that has made eligible expenditures in a taxation year may apply to the Minister of Finance, at the time and in the manner prescribed by the Minister of Finance, for a tax credit equal to 35% of the lesser of

- (a) the amount of eligible expenditures made in the taxation year; or

(b) \$100,000.

(3) Where the Minister is satisfied that a corporation is entitled to a tax credit pursuant to this Section, the Minister shall, at the time and in the manner prescribed by the Minister, issue a tax credit certificate to the corporation.

(4) Where a corporation files with its return of income for a taxation year a tax credit certificate issued by the Minister of Finance pursuant to subsection (3), the corporation may deduct from the tax otherwise payable by the corporation under this Act the amount of the tax credit indicated on the tax credit certificate.

(5) Where a corporation

(a) has been issued a tax certificate pursuant to this Section; and

(b) the amount of the tax credit exceeds the amount of tax payable by the corporation for the taxation year,

the corporation may carry forward and deduct any unused balance of the tax credit from tax otherwise payable by the corporation in any one or more of the corporation's seven subsequent taxation years.

(6) The Governor in Council may make regulations

(a) prescribing forms for the purpose of this Section;

(b) governing any matter that may be prescribed pursuant to this Section;

(c) requiring a corporation to supply information or documents respecting any matter required in assessing compliance with this Section;

(d) respecting those expenditures that qualify as eligible expenditures for the purpose of this Section;

(e) respecting those corporations that are eligible for the tax credit pursuant to this Section;

(f) defining any word or expression used but not defined in this Section;

(g) to carry out effectively the intent and purpose of this Section. 2000, c. 4, s. 61; 2014, c. 34, s. 18.

Subdivision h — Film Industry Tax Credit

Film industry tax credit prior to July 1, 2015

71 (1) A corporation producing an eligible film in the Province may apply in the manner prescribed for a film industry tax credit if the principal photography for the eligible film commenced before July 1, 2015.

(2) Where the corporation meets the prescribed criteria, there may be deducted from tax otherwise payable by the corporation an amount equal to the lesser of

- (a) the sum of
- (i) 32.5% of the eligible salaries paid after December 31, 1999, and before April 11, 2000, to residents of the Province,
 - (ii) for film production activity undertaken in an eligible geographic area of the Province as prescribed by regulation,
 - (A) 35% of the eligible salaries paid after April 10, 2000, and before 2005,
 - (B) 40% of the eligible salaries paid on or after January 1, 2005, and before July 1, 2006,
 - (C) where 50% or greater of the days for principal photography for the production are spent in the eligible geographic area, 40% of the eligible salaries paid after June 30, 2006, and before October 1, 2007, and
 - (D) where 50% or greater of the days for principal photography for the production are spent in the eligible geographic area, 60% of the eligible salaries paid after September 30, 2007, and before December 1, 2010,
 - (iii) for film production activity undertaken otherwise than in an eligible geographic area of the Province as prescribed by regulation,
 - (A) 30% of the eligible salaries paid after April 10, 2000, and before 2005, and
 - (B) 35% of the eligible salaries paid after December 31, 2004, and before July 1, 2006,
 - (iv) for film production activity where less than 50% of the principal photography is undertaken after June 30, 2006, in an eligible geographic area of the Province as prescribed by regulation,
 - (A) 40% of the eligible salaries paid times the proportion of time the days for principal photography are spent inside an eligible geographic area are out of the total days for principal photography for the production, paid after June 30, 2006, and before October 1, 2007, and
 - (B) 35% of the eligible salaries paid times the proportion of time the days for principal photography are spent outside an eligible geographic area are out of the total days for principal photography for the production, paid after June 30, 2006, and before October 1, 2007, and
 - (v) for film production activity where less than 50% of principal photography is undertaken after September 30,

2007, in an eligible geographic area of the Province as prescribed by regulation,

(A) 60% of the eligible salaries paid times the proportion of time the days for principal photography are spent inside an eligible geographic area are out of the total days for principal photography for the production, paid after September 30, 2007, and before December 1, 2010, and

(B) 50% of the eligible salaries paid times the proportion of time the days for principal photography are spent outside an eligible geographic area are out of the total days for principal photography for the production, paid after September 30, 2007, and before December 1, 2010; and

(b) 16.25% of the total production costs of the eligible film in the case of subclause (a)(i), 17.5% in the case of paragraph (a)(ii)(A), 20% in the case of paragraphs (a)(ii)(B) and (C), 30% in the case of paragraph (a)(ii)(D), 15% in the case of paragraph (a)(iii)(A), 17.5% in the case of paragraph (a)(iii)(B), 20% in the case of paragraph (a)(iv)(A), 17.5% in the case of paragraph (a)(iv)(B), 30% in the case of paragraph (a)(v)(A) and 25% in the case of paragraph (a)(v)(B).

(3) A corporation may deduct from tax otherwise payable by the corporation an additional frequent filmer credit of 5% of the eligible salaries of an eligible film if

(a) the principal photography for the film commenced after December 31, 2004, and before July 1, 2015;

(b) the principal photography for the film commenced within 24 months of the completion of principal photography for two other eligible films;

(c) the principal owner for each of the three films is the same person or group of persons; and

(d) the film and two other eligible films satisfy the eligibility criteria prescribed by regulation.

(4) Where film production activity of an eligible film commences after November 30, 2010, and before July 1, 2015, and the corporation meets the prescribed criteria, there may be deducted from tax otherwise payable by the corporation an amount equal to

(a) 60% of the eligible salaries paid after November 30, 2010, where 50% or greater of the days for principal photography for the film production activity are undertaken in an eligible geographic area of the Province as prescribed by regulation; or

(b) the sum of

(i) 60% of the eligible salaries paid after November 30, 2010, times the proportion of time the days for principal photography are spent inside an eligible geographic area are out of the total days for principal photography where less

than 50% of the days for principal photography for the film production activity are undertaken in an eligible geographic area of the Province as prescribed by regulation, and

(ii) 50% of the eligible salaries paid after November 30, 2010, times the proportion of time the days for principal photography are spent outside an eligible geographic area are out of the total days for principal photography where less than 50% of the days for principal photography for the film production activity are undertaken in an eligible geographic area of the Province as prescribed by regulation.

(5) The amount by which the tax credit referred to in subsections (2) to (4) exceeds the corporation's tax payable for the taxation year calculated without reference to this Section may be applied by the Minister of Finance to pay

(a) any tax, interest or penalty owing by the corporation for that or any prior taxation year pursuant to this Act, the income statute of any agreeing province or the Federal Act;

(b) any contribution, penalty or interest by the corporation for that or any prior taxation year as a result of payments required from the corporation pursuant to the *Canada Pension Plan*;

(c) any premium, interest or penalty owing by the corporation for that or any prior taxation year pursuant to the *Employment Insurance Act* (Canada),

and the part of the amount not so applied must be paid to the corporation.

(6) The Governor in Council may make regulations

(a) prescribing forms for the purpose of this Section;

(b) governing any matter that may be prescribed pursuant to this Section;

(c) requiring a corporation to supply information or documents respecting any matter required in assessing compliance with this Section;

(d) respecting those corporations that are eligible for the tax credit pursuant to this Section;

(e) prescribing the criteria for determining when an expenditure has occurred in an eligible geographic area;

(f) prescribing eligible geographic areas of the Province;

(g) defining any word or expression used but not defined in this Section;

(h) to carry out effectively the intent and purpose of this Section.

(7) A regulation made pursuant to this Section may be made retroactive in its operation to a date not earlier than January 1, 2005.

(8) A corporation that has claimed and is eligible for a tax credit under this Section for a taxation year is deemed to have paid, at the time referred to

in paragraph 157(1)(b) of the Federal Act, as that paragraph relates to that taxation year, the amount of that credit on account of its tax payable under this Act. 2000, c. 4, s. 61; 2002, c. 5, s. 28; 2003, c. 4, s. 21; 2005, c. 6, s. 22; 2006, c. 2, s. 25; 2007, c. 9, s. 23; 2008, c. 2, s. 22; 2011, c. 8, s. 10; 2014, c. 33, s. 12; 2015, c. 6, s. 21.

Subdivision i — Computer-assisted Labour Incentives

Digital media tax credit

72 (1) In this Section,

“eligible corporation” means a corporation, as defined by the regulations, that satisfies the conditions prescribed by the regulations;

“eligible expenditure” means the amount determined under the rules prescribed by the regulations;

“eligible product” means, in respect of a product developed by an eligible corporation, a product

(a) that satisfies the conditions prescribed by the regulations; and

(b) for which public financial support would not be contrary to public policy in the opinion of the Minister of Finance and Treasury Board of the Province or, where another person is designated under subsection (4), in the opinion of that person;

“eligible product developed by an eligible corporation” means a product developed and completed in accordance with the conditions specified in the regulations;

“qualifying expenditure” means the amount determined under the rules prescribed by the regulations;

“total expenditure” means the amount determined under the rules prescribed by the regulations.

(2) This Section applies with respect to expenditures by an eligible corporation incurred after December 31, 2007, or such earlier date as the Governor in Council may order by regulation, and before January 1, 2026, that are included as eligible expenditures or total expenditures for an eligible product.

(3) A corporation that is an eligible corporation in the taxation year and complies with the requirements of this Section may deduct from tax otherwise payable in the taxation year by the corporation an amount equal to the lesser of

(a) the sum of

(i) 35% of the qualifying expenditure incurred before January 1, 2008, for an eligible product developed by the eligible corporation otherwise than in an eligible geographic area of the Province as prescribed by regulation,

(ii) 50% of the qualifying expenditure incurred after December 31, 2007, and before January 1, 2026, for an eligible product developed by the eligible corporation otherwise than in an eligible geographic area of the Province as prescribed by regulation,

(iii) 40% of the qualifying expenditure incurred before January 1, 2008, for an eligible product developed by the eligible corporation in an eligible geographic area of the Province as prescribed by regulation, and

(iv) 60% of the qualifying expenditure incurred after December 31, 2007, and before January 1, 2026, for an eligible product developed by the eligible corporation in an eligible geographic area of the Province as prescribed by regulation; and

(b) the sum of

(i) 17.5% of the total expenditures incurred before January 1, 2008, for an eligible product developed by an eligible corporation in the case of subclause (a)(i),

(ii) 25% of the total expenditure incurred after December 31, 2007, and before January 1, 2026, for an eligible product developed by an eligible corporation in the case of subclause (a)(ii),

(iii) 20% of the total expenditures incurred before January 1, 2008, for an eligible product developed by an eligible corporation in the case of subclause (a)(iii), and

(iv) 30% of the total expenditures incurred after December 31, 2007, and before January 1, 2026, for an eligible product developed by an eligible corporation in the case of subclause (a)(iv).

(4) In order to be eligible to deduct or claim an amount in respect of a deduction under this Section for a taxation year, an eligible corporation shall apply in the manner prescribed by regulation to

(a) the Minister of Finance and Treasury Board of the Province, or a person designated by the Minister of Finance and Treasury Board of the Province, for certification of its eligible products for the purpose of this Section; and

(b) the Minister of Finance and Treasury Board of the Province, or a person designated by the Minister of Finance and Treasury Board of the Province, for certification of the amount of the qualifying expenditure and the amount of the eligible corporation's tax credit under this Section applicable to the eligible product.

(5) Where the Minister of Finance and Treasury Board of the Province, or a person designated by the Minister of Finance and Treasury Board of the Province, allows a deduction pursuant to this Section to an eligible corporation for a taxation year, a certificate must be issued to the eligible corporation for the taxation year, certifying in respect of each eligible product the estimated amount of the corporation's tax credit under this Section applicable to the product.

(6) In order to deduct or claim an amount under this Section for a taxation year, an eligible corporation shall deliver to the Minister with its return for the taxation year the certificate for the taxation year that is issued under subsection (5).

(7) The amount by which the tax credit referred to in subsection (3) exceeds the corporation's tax payable for the taxation year calculated without reference to this Section may be applied by the Minister to

(a) any tax, interest or penalty owing by the corporation for that or any prior taxation year pursuant to this Act, the income statute of any agreeing province or the Federal Act;

(b) any contribution, penalty or interest by the corporation for that or any prior taxation year as a result of payments required from the corporation pursuant to the *Canada Pension Plan*;

(c) any premium, interest or penalty owing by the corporation for that or any prior taxation year pursuant to the *Employment Insurance Act* (Canada),

and the part of the amount not so applied must be paid to the corporation.

(8) A corporation that has claimed and is eligible for a tax credit under this Section for a taxation year is deemed to have paid, at the time referred to in paragraph 157(1)(b) of the Federal Act, as that paragraph relates to that taxation year, the amount of that credit on account of its tax payable under this Act.

(9) The Governor in Council may make regulations

(a) governing any matter that may be prescribed pursuant to this Section;

(b) requiring a corporation to supply information or documents respecting any matter required in assessing eligibility and compliance with this Section;

(c) prescribing the criteria for determining when an expenditure has been incurred in an eligible geographic area;

(d) prescribing eligible geographic areas of the Province;

(e) designating the date for expenditures for the purpose of subsection (2);

(f) defining any word or expression used but not defined in this Section;

(g) to carry out effectively the intent and purpose of this Section.

(10) A regulation made pursuant to this Section may be made retroactive to a date not earlier than January 1, 2007. 2007, c. 9, s. 24; 2008, c. 2, s. 23; 2014, c. 33, s. 13; 2014, c. 34, s. 19; 2015, c. 6, s. 22; 2020, c. 2, s. 5.

Digital animation tax credit

73 (1) In this Section,

“accredited production corporation” means a corporation, as defined by the regulations, that satisfies the conditions prescribed by the regulations;

“assistance” means the amount determined under the rules prescribed by the regulations;

“basic tax-credit rate” means the basic tax-credit rate percentage prescribed by the regulations;

“digital-animation tax-credit rate” means the digital-animation tax-credit rate percentage prescribed by the regulations;

“eligible corporation” means a corporation, as defined by the regulations, that satisfies the conditions prescribed by the regulations;

“eligible digital-animation production” means a production, as defined by the regulations, that satisfies the conditions prescribed by the regulations;

“eligible NS animation labour expenditure” means the amount determined under the rules prescribed by the regulations;

“eligible NS labour expenditure” means the amount determined under the rules prescribed by the regulations;

“eligible remuneration” means the amount determined under the rules prescribed by the regulations;

“indigenous tax-credit rate” means the indigenous tax credit rate percentage prescribed by the regulations;

“qualifying labour expenditure” means the amount determined under the rules prescribed by the regulations.

(2) Where, in respect of a taxation year, a corporation has been issued a tax-credit certificate pursuant to subsection (6), the corporation may deduct from tax otherwise payable in the taxation year the amount specified in the tax-credit certificate.

(3) The amount by which the tax credit referred to in subsection (2) exceeds the corporation’s tax payable for the taxation year calculated without reference to this Section may be applied by the Minister to

(a) any tax, interest or penalty owing by the corporation for that or any prior taxation year pursuant to this Act, the income statute of any agreeing province or the Federal Act;

(b) any contribution, penalty or interest owing by the corporation for that or any prior taxation year as a result of payments required from the corporation pursuant to the *Canada Pension Plan*; and

(c) any premium, interest or penalty owing by the corporation for that or any prior taxation year pursuant to the *Employment Insurance Act* (Canada),

and the part of the amount not so applied must be paid to the corporation.

(4) A corporation that has claimed and is eligible for a tax credit under this Section for a taxation year is deemed to have paid, at the time referred to in paragraph 157(1)(b) of the Federal Act, as that paragraph relates to that taxation year, the amount of the credit on account of its tax payable under this Act.

(5) To be eligible to deduct or claim an amount pursuant to this Section for a taxation year, a corporation shall apply, in the manner prescribed by the regulations, to the Minister of Finance and Treasury Board of the Province, or a

person designated by the Minister of Finance and Treasury Board of the Province, to be issued a tax-credit certificate pursuant to subsection (6).

(6) Where the Minister of Finance and Treasury Board of the Province, or the person designated by the Minister of Finance and Treasury Board of the Province, is satisfied that

(a) the corporation that has applied for a tax-credit certificate pursuant to subsection (5) is an eligible corporation for the taxation year in respect of which the application was made;

(b) the production in respect of which the application was made pursuant to subsection (5) is an eligible digital-animation production; and

(c) the corporation satisfies any other requirements that may be prescribed by the regulations,

a tax-credit certificate must be issued to the corporation for the taxation year, specifying in respect of each eligible digital-animation production the amount, calculated in accordance with subsection (7), of the corporation's tax credit pursuant to this Section.

(7) Where principal photography or key animation of an eligible digital-animation production begins after June 30, 2015, and before January 1, 2026, the amount of a corporation's tax credit that must be specified in a tax-credit certificate issued pursuant to subsection (6) is the sum of

(a) the positive amount, if any, determined by the formula

$$\text{BTC} \times (\text{QLE} - \text{TA})$$

where

BTC is the basic tax-credit rate,

QLE is the total of the amount of qualifying labour expenditure in respect of the eligible digital-animation production, and

TA is the total of all amounts of assistance received in respect of the eligible digital-animation production;

(b) the positive amount, if any, determined by the formula

$$\text{DAC} \times \text{NSAL}$$

where

DAC is the digital-animation tax-credit rate, and

NSAL is the total of the amount of eligible NS animation labour expenditure in respect of the eligible digital-animation production;

and

(c) where the eligible corporation is an accredited production corporation, the positive amount, if any, determined by the formula

$$\text{IC} \times \text{NSAL}$$

where

IC is the indigenous tax-credit rate, and

NSAL is the total of the amount of eligible NS animation labour expenditure in respect of the eligible digital animation production.

(8) A corporation is not entitled to deduct or claim an amount pursuant to this Section for a taxation year unless the tax-credit certificate issued under subsection (6) is

(a) filed with the corporation's return for the taxation year;

or

(b) where the return is filed electronically, held by the corporation and filed with the Minister upon request.

(9) The Minister of Finance and Treasury Board of the Province may revoke a tax-credit certificate issued pursuant to subsection (6) if any information provided by the corporation to obtain the certificate is false or misleading or fails to disclose a material fact.

(10) A certificate revoked pursuant to subsection (9) is void *ab initio*.

(11) Where the Minister of Finance and Treasury Board of the Province determines that any amount paid or applied pursuant to this Section did not qualify as a tax credit of the corporation to which it was paid or for the benefit of which it was applied, that amount is recoverable from the corporation and is a debt due by the corporation to the Crown in right of the Province.

(12) The Governor in Council may make regulations

(a) respecting any matter that may be prescribed pursuant to this Section;

(b) requiring a corporation to supply information or documents respecting any matter required in assessing eligibility and compliance with this Section;

(c) prescribing criteria for determining when an expenditure has been incurred in an eligible geographic area;

(d) prescribing eligible geographic areas of the Province;

(e) defining any word or expression used but not defined in this Section;

(f) further defining any word or expression defined in this Section;

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

(13) A regulation made pursuant to this Section may be made retroactive to a date not earlier than July 1, 2015. 2015, c. 6, s. 23; 2020, c. 2, s. 6.

Subdivision j — ISO14000 Certification

ISO14000 certification expenditure prior to 2001

74 (1) In this Section, “eligible expenditure” means an expenditure made after 1995 and before January 1, 2001, by a corporation with a permanent establishment in the Province with respect to audit, training and documentation expenses necessary for the corporation to become ISO14000 certified.

(2) In this Section, “Minister” means the Minister of Finance and Treasury Board of the Province.

(3) A corporation that has made eligible expenditures in a taxation year may apply to the Minister of Finance, at the time and in the manner prescribed by the Minister of Finance, for a tax credit equal to 25% of the lesser of

- (a) the amount of eligible expenditures made in the taxation year; and
- (b) \$150,000.

(4) Where the Minister is satisfied that a corporation is entitled to a tax credit pursuant to this Section, the Minister shall, at the time and in the manner prescribed by the Minister, issue a tax credit certificate to the corporation.

(5) Where a corporation files with its return of income for a taxation year a tax credit certificate issued by the Minister of Finance pursuant to subsection (4), the corporation may deduct from the tax otherwise payable by the corporation under this Act the amount of the tax credit indicated on the tax credit certificate.

- (6)** The Governor in Council may make regulations
- (a) prescribing forms for the purpose of this Section;
 - (b) governing any matter that may be prescribed pursuant to this Section;
 - (c) requiring a corporation to supply information or documents respecting any matter required in assessing compliance with this Section;
 - (d) respecting those expenditures that qualify as eligible expenditures for the purpose of this Section;
 - (e) defining any word or expression used but not defined in this Section;
 - (f) respecting any matter or thing the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Section. 2000, c. 4, s. 61; 2014, c. 34, s. 20.

Subdivision k — Manufacturing and Processing Investment Tax Credit

Manufacturing and processing investment tax credit prior to 2010

75 (1) In this Section,

“capital cost” to the corporation has the meaning assigned by paragraphs 127(11.1)(b) and (d) of the Federal Act and, for greater certainty, for the purpose of this subsection, “government assistance” as described in paragraphs 127(11.1)(b) and (d) of the Federal Act does not include the investment tax credit determined under this Section;

“investment tax credit” of a corporation at the end of a taxation year means the amount, if any, by which the total of

- (a) an amount equal to
 - (i) 30% of the total of all amounts each of which is the capital cost to the corporation of a qualified property acquired by it before January 1, 2001, and
 - (ii) 15% of the total of all amounts each of which is the capital cost to the corporation of a qualified property acquired by it after December 31, 2000, but before January 1, 2003,

determined without reference to subsection 13(7.1) of the Federal Act,

- (b) an amount equal to
 - (i) where a qualified property is acquired before January 1, 2001, 30% of the total of all amounts each of which is the capital cost to the corporation of the qualified property acquired by it in any of the seven taxation years immediately preceding or the three taxation years immediately following the year of acquisition to no later than the taxation year for the corporation ending December 31, 2009, and
 - (ii) where a qualified property is acquired after December 31, 2000, and before January 1, 2003, 15% of the total of all amounts each of which is the capital cost to the corporation of the qualified property acquired by it in any of the seven taxation years immediately preceding or the three taxation years immediately following the year of acquisition to no later than the taxation year for the corporation ending December 31, 2009,

determined without reference to subsection 13(7.1) of the Federal Act,

- (c) an amount equal to the total of all amounts each of which is an amount required by subsection (4), (5) or (6) to be added in computing its investment tax credit at the end of the year; and
- (d) the total of all amounts each of which is an amount required by subsection (4), (5) or (6) to be added in computing its investment tax credit at the end of any of the seven taxation years immediately preceding or the three taxation years immediately following the year,

exceeds

(e) the total of all amounts each of which is that portion of the amount deducted pursuant to subsection (2) from the tax otherwise payable under this Act by the corporation for a preceding taxation year that is in respect of property acquired in the year or in the seven taxation years immediately preceding or the two taxation years immediately following the year;

“manufacturing or processing” has the meaning assigned by the definition “manufacturing or processing” in subsection 125.1(3) of the Federal Act and includes qualified activities as defined by Federal Regulations made for the purpose of subsection 125.1(3) of the Federal Act;

“qualified property” of a corporation means property acquired by the corporation after December 31, 1996, and before January 1, 2003, that is qualified property within the meaning assigned by the definition under subsections 127(9) and (11) of the Federal Act, that has not been used, or acquired for use or lease, for any purpose whatever before it was acquired by the corporation and that is to be

(a) used by the corporation in the Province primarily for the purpose of manufacturing or processing of goods for sale or lease; or

(b) leased by the corporation to a lessee, other than a person exempt from tax under section 149 of the Federal Act, who can reasonably be expected to use the property in the Province primarily for the purpose of manufacturing or processing of goods for sale or lease,

but clause (b) does not apply in respect of property that is machinery and equipment unless the property is leased by the corporation in the ordinary course of carrying on a business in the Province and the principal business of the corporation is manufacturing property that it sells or leases.

(2) There may be deducted from the tax otherwise payable pursuant to this Act by a corporation for a taxation year an amount not exceeding the lesser of

(a) the corporation’s investment tax credit at the end of the year; and

(b) the tax otherwise payable by the corporation pursuant to this Act for the year.

(3) Notwithstanding anything contained in this Act,

(a) no capital cost may be added to the capital cost of qualified property after May 9, 2006; and

(b) the deduction by a corporation pursuant to subsection (2) for an investment tax credit expires the taxation year for the corporation ending in 2009.

(4) Where, in a particular taxation year of a corporation that is a beneficiary under a trust, an amount would, if the trust were a corporation, be deter-

mined in respect of the trust under clause (a) or (c) of the definition of “investment tax credit” in subsection (1) for its taxation year ending in that particular taxation year, the portion of that amount that may, having regard to all circumstances, including the terms and conditions of the trust, reasonably be considered to be the corporation’s share thereof is the amount required to be added in computing the investment tax credit of the corporation at the end of that particular taxation year.

(5) Where, in a particular taxation year of a corporation that is a member of a partnership, an amount would, if the partnership were a corporation, be determined in respect of the partnership under clause (a) or (c) of the definition of “investment tax credit” in subsection (1) for its taxation year ending in that particular taxation year, the portion of that amount that may reasonably be considered to be the corporation’s share thereof is the amount required to be added in computing the investment tax credit of the corporation at the end of that particular taxation year.

(6) Where, in a particular taxation year of a corporation that is a member of a limited partnership, an amount would, if the limited partnership were a corporation, be determined in respect of the limited partnership under clause (a) or (c) of the definition of “investment tax credit” in subsection (1) for its taxation year ending in that particular taxation year, the portion of that amount that may reasonably be considered to be the corporation’s share thereof, determined with reference to subsection 127(8.1) of the Federal Act, is the amount required to be added in computing the investment tax credit of the corporation at the end of that particular taxation year.

(7) Where, after December 31, 1996, there has been an amalgamation within the meaning of subsection 87(1) of the Federal Act and one or more of the predecessor corporations had an investment tax credit for any taxation year any portion of which was not deducted by the predecessor corporation in computing its tax otherwise payable under this Act for any taxation year, for the purpose of computing the new corporation’s investment tax credit at the end of any taxation year, the new corporation is deemed to be the same corporation as, and a continuation of, each such predecessor corporation.

(8) Where, after December 31, 1996, there has been a winding-up to which subsection 88(1) of the Federal Act applies and the subsidiary had an investment tax credit for any taxation year any portion of which was not deducted by the subsidiary in computing its tax otherwise payable under this Act for any taxation year, and with reference to paragraph 88(1)(e.3) of the Federal Act, for the purpose of computing the parent’s investment tax credit at the end of any particular taxation year ending after the subsidiary was wound up, the parent is deemed to be the same corporation as, and a continuation of, the subsidiary.

(9) Subsections 127(9.1) and (9.2) and paragraph (m) of the definition of “investment tax credit” of subsection 127(9) of the Federal Act apply for the purpose of this Section.

(10) The corporation may renounce the investment tax credit in respect of qualified property acquired during the year in whole or in part on or before the time on or before which the corporation is required to file its return of income for the year pursuant to section 150 of the Federal Act and, where the corporation so renounces entitlement to that portion of the credit, the corporation is deemed for all purposes never to have received, to have been entitled to receive or to have had a reasonable expectation of receiving the credit or that part of the credit.

- (11) The Governor in Council may make regulations respecting
- (a) the capital costs of a qualified property primarily incurred on or before December 31, 2000, that may be deducted pursuant to this Section;
 - (b) the deduction of capital costs of a qualified property with respect to a project initiated before January 1, 2003, and completed after that date. 2000, c. 4, s. 61; 2001, c. 3, s. 14; 2006, c. 2, s. 26.

Subdivision I — Capital Investment Tax Credit

Capital investment tax credit

76 (1) In this Section,

“approved project” means a project, as defined by the regulations, that satisfies the conditions prescribed by the regulations;

“eligible corporation” means a corporation, as defined by the regulations, that satisfies the conditions prescribed by the regulations;

“government assistance” means government assistance, as defined in subsection 127(9) of the Federal Act, other than a tax credit that may be deducted or claimed pursuant to this Section;

“qualified property”, in respect of an eligible corporation, means property acquired by the eligible corporation after December 31, 2014, and before January 1, 2030, to be used in the Province, that

(a) is qualified property as defined in subsection 127(9) of the Federal Act; or

(b) meets the criteria, set out in the regulations made under this Act, to be qualified property.

(2) Where, in respect of a taxation year, a corporation has been issued a tax-credit certificate pursuant to subsection (6), the corporation may deduct from tax otherwise payable in the taxation year the amount specified in the tax-credit certificate.

(3) The amount by which the tax credit referred to in subsection (2) exceeds the corporation’s tax payable for the taxation year calculated without reference to this Section may be applied by the Minister to

(a) any tax, interest or penalty owing by the corporation for that or any prior taxation year pursuant to this Act, the income statute of any agreeing province or the Federal Act;

(b) any contribution, penalty or interest owing by the corporation for that or any prior taxation year as a result of payments required from the corporation pursuant to the *Canada Pension Plan*;

(c) any premium, interest or penalty owing by the corporation for that or any prior taxation year pursuant to the *Employment Insurance Act* (Canada),

and the part of the amount not so applied must be paid to the corporation.

(4) A corporation that has claimed and is eligible for a tax credit under this Section for a taxation year is deemed to have paid, at the time referred to in paragraph 157(1)(b) of the Federal Act, as that paragraph relates to that taxation year, the amount of the credit on account of its tax payable under this Act.

(5) To be eligible to deduct or claim an amount pursuant to this Section for a taxation year, a corporation shall apply, in the manner prescribed by the regulations, to the Minister of Finance and Treasury Board of the Province, or a person designated by the Minister of Finance and Treasury Board of the Province, to be issued a tax-credit certificate pursuant to subsection (6).

(6) Where the Minister of Finance and Treasury Board of the Province, or the person designated by the Minister of Finance and Treasury Board of the Province, is satisfied that

(a) the corporation that has applied for a tax-credit certificate pursuant to subsection (5) is an eligible corporation for the taxation year in respect of which the application was made;

(b) each project in respect of which the application was made pursuant to subsection (5) is an approved project; and

(c) the corporation satisfies any other requirements that may be prescribed by the regulations,

a tax-credit certificate must be issued to the corporation for the taxation year, specifying in respect of each approved project the amount, calculated in accordance with subsections (7) and (8), of the corporation's tax credit pursuant to this Section.

(7) The amount of a corporation's tax credit, which must be specified in a tax-credit certificate issued pursuant to subsection (6), is equal to 15% of the aggregate of all amounts each of which is the amount by which the capital cost of qualified property acquired by the corporation before October 1, 2022, in the taxation year, in respect of an approved project exceeds the aggregate of all amounts each of which is an amount of government assistance that may reasonably be considered to relate directly to the acquisition of the qualified property.

(8) The amount of a corporation's tax credit, which must be specified in a tax-credit certificate issued pursuant to subsection (6), is equal to 25% of the aggregate of all amounts each of which is the amount by which the capital cost of qualified property acquired by the corporation on or after October 1, 2022, in the taxation year, in respect of an approved project exceeds the aggregate of all amounts each of which is an amount of government assistance that may reasonably be considered to relate directly to the acquisition of the qualified property.

(9) Notwithstanding subsections (7) and (8), the aggregate amount of tax credits that may be claimed by a corporation in respect of an approved project may not exceed the amount, if any, prescribed by the Minister of Finance and Treasury Board of the Province.

(10) A corporation is not entitled to deduct or claim an amount pursuant to this Section for a taxation year unless the tax-credit certificate issued under subsection (6) is

(a) filed with the corporation's return for the taxation year;

or

(b) where the return is filed electronically, held by the corporation and filed with the Minister upon request.

(11) The Minister of Finance and Treasury Board of the Province may revoke a tax-credit certificate issued pursuant to subsection (6) if the project in respect of which the certificate was issued ceases to be an approved project or any information provided by the corporation to obtain the certificate is false or misleading or fails to disclose a material fact.

(12) A certificate revoked pursuant to subsection (11) is void *ab initio*.

(13) Where the Minister of Finance and Treasury Board of the Province determines that any amount paid or applied pursuant to this Section did not qualify as a tax credit of the corporation to which it was paid or for the benefit of which it was applied, that amount is recoverable from the corporation and is a debt due by the corporation to the Crown in right of the Province.

(14) The Governor in Council may make regulations

(a) governing any matter that may be prescribed pursuant to this Section;

(b) requiring a corporation to supply information or documents respecting any matter required in assessing eligibility and compliance with this Section;

(c) prescribing criteria for determining when property is considered qualified property pursuant to clause (b) of the definition of “qualified property” in subsection (1);

(d) prescribing the criteria for determining whether qualified property is acquired in respect of an approved project;

(e) defining any word or expression used but not defined in this Section;

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

(15) The Minister of Finance and Treasury Board of the Province may make regulations prescribing the aggregate amount of tax credits that may be claimed in respect of an approved project and respecting the manner in which the prescribed amount will apply.

(16) A regulation made pursuant to this Section may be made retroactive to a date not earlier than January 1, 2015. 2014, c. 33, s. 14; 2016, c. 2, s. 5; 2022, c. 35, s. 3; 2023, c. 12, s. 3.

DIVISION D — DEDUCTIONS AVAILABLE TO ALL TAXPAYERS

POLITICAL CONTRIBUTIONS

Political contributions

77 (1) In this Section,

“candidate” means a person who has been officially nominated as a candidate pursuant to the *Elections Act*;

“registered party” means a registered party within the meaning of the *Elections Act*.

(2) In respect of the aggregate amount of contributions, other than contributions exempted by the definition of “contributions” in Section 195 of the *Elections Act*, made by a taxpayer to candidates and registered parties during the taxation year, that taxpayer may deduct from the amount of tax that that taxpayer would otherwise be required to pay under this Act an amount equal to the lesser of

- (a) for the 2006 and previous taxation years,
 - (i) 75% of the aggregate amount contributed where the aggregate amount contributed does not exceed \$100,
 - (ii) \$75 plus 50% of the amount by which the aggregate amount contributed exceeds \$100 but does not exceed \$550, or
 - (iii) the lesser of
 - (A) \$300 plus 33-1/3% of the amount by which the aggregate amount contributed exceeds \$550, and
 - (B) \$500,

or the amount of the tax payable, whichever is the lesser; and

- (b) for the 2007 and subsequent taxation years,
 - (i) 75% of the aggregate amount contributed, to a maximum of \$750, or
 - (ii) the amount of the tax payable,

whichever is the lesser.

(3) Payment of each amount that is included in the aggregate amount of contributions in respect of which a deduction is claimed under subsection (2) must be proved by filing with the Minister receipts containing prescribed information, signed by the official agent of the registered party or the official agent of the candidate, as the case may be. 2000, c. 4, s. 61; 2007, c. 1, s. 9; 2012, c. 5, s. 369.

FOOD BANK TAX CREDIT FOR FARMERS

Food bank tax credit for farmers

78 (1) In this Section,

“agricultural product” has the meaning prescribed by the regulations;

“eligible food bank” means a person or entity that

- (a) distributes food in the Province without charge for the relief of poverty as part of its mandate;
 - (b) is registered as a charity under the Federal Act;
- and

(c) satisfies any other conditions prescribed by the regulations;

“eligible person” means

(a) an individual who carries on the business of farming in the Province or the individual’s spouse or common-law partner; or

(b) a corporation that carries on the business of farming in the Province.

(2) A donation is a qualifying donation for a taxation year if

(a) it is a donation of one or more agricultural products produced in the Province by an eligible person; and

(b) it is donated by an eligible person to an eligible food bank.

(3) An eligible person, who is an individual and who was resident in the Province on the last day of a taxation year ending after December 31, 2015, may deduct from the amount of tax otherwise payable for the year a food bank donation tax credit not exceeding the amount determined by the formula

$$A \times B$$

where

A is the sum of the fair market value of each qualifying donation, the fair market value of which was used in calculating the amount deducted by the individual under Section 21 in computing the amount of the individual’s tax payable for the year under this Part; and

B is 25%.

(4) An eligible person that is a corporation may deduct from the amount of tax otherwise payable for a taxation year ending after December 31, 2015, a food bank donation tax credit not exceeding the amount determined by the formula

$$A \times B$$

where

A is that part of the person’s qualifying donations for the year that was deducted by the person under subsection 110.1(1) of the Federal Act in computing the person’s taxable income for the year; and

B is 25%.

(5) A trust is not entitled to a tax credit under this Section.

(6) The Governor in Council may make regulations

(a) governing any matter that may be prescribed pursuant to this Section;

(b) defining any word or expression used but not defined in this Section;

(c) respecting any matter or thing the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Section. 2016, c. 2, s. 6.

DIVISION E — RETURNS, ASSESSMENTS, PAYMENT AND APPEALS

Returns, estimate of tax and assessment

79 Subsection 70(7), except the portion thereof that is after paragraph (a) thereof, sections 150, 150.1 and 151 and subsections 152(1) to (3.1) and (4) to (9), 153(1) to (3) and 156.1(4) of the Federal Act apply for the purpose of this Act. 2000, c. 4, s. 61.

Reassessment while collection agreement in effect

80 While a collection agreement is in effect, notwithstanding that the normal reassessment period for a taxpayer in respect of a taxation year has elapsed, where the tax payable under Part I of the Federal Act by the taxpayer for the year is reassessed, the Minister shall reassess, make additional assessments or assess tax, interest or penalties as the circumstances require. 2000, c. 4, s. 61.

Payment of tax by farmers and fish harvesters and by other individuals

81 (1) Sections 155 and 156 of the Federal Act apply for the purpose of this Act.

(2) Where, because of subsection 156.1(2) or (3) of the Federal Act, no instalment is required to be made under section 155 or 156 of the Federal Act by an individual for a particular taxation year, the requirements for payment of instalments under subsection (1) do not apply to the individual for that year. 2000, c. 4, ss. 61, 62.

Payment of tax by corporation

82 (1) Subsections 157(1), (2), (2.1) and (4) of the Federal Act apply for the purpose of this Act.

(2) Where a collection agreement is in effect, a corporation that pays amounts in respect of a taxation year computed pursuant to subparagraph 157(1)(a)(i), (ii) or (iii) of the Federal Act and that is required to make payments pursuant to subsection 157(1) of the Federal Act, as it applies for the purpose of this Act, shall pay amounts in respect of the year computed pursuant to the same subparagraph as it applies for the purpose of this Act. 2000, c. 4, s. 61.

Application of Federal Act provisions

83 Subsection 70(2), paragraphs 104(23)(d) and (e), sections 158 to 160, subsections 160.1(1), (3) and (4), sections 160.2 and 160.3 and subsections 161(1) to (7), (9) and (11) of the Federal Act apply for the purpose of this Act. 2000, c. 4, s. 61.

Refund

84 In applying subsection 160.1(1) of the Federal Act for the purpose of this Act, “refund” includes a refund that arises by reason of the provision of this Act

- (a) that allows a taxpayer to deduct an amount from the tax payable pursuant to this Act; or
- (b) that deems an amount to have been paid by a taxpayer as or on account of the tax payable pursuant to this Act by the taxpayer. 2000, c. 4, s. 61.

Where collection agreement

85 (1) Where an individual is deemed under subsection 161(4) of the Federal Act to be liable, in respect of tax payable under Part I of the Federal Act for a taxation year, to pay a part or instalment computed by reference to an amount described in paragraph 161(4)(a), (b) or (c) of the Federal Act, notwithstanding subsection 161(4) of the Federal Act, as it applies for the purpose of this Act, the individual is deemed for the purpose of subsection 161(2) of the Federal Act, as it applies for the purpose of this Act, to be liable to pay, in respect of tax payable under this Act for the year, a part or instalment computed by reference to the same paragraph, as it applies for the purpose of this Act.

(2) Where an individual is deemed under subsection 161(4.01) of the Federal Act to be liable, in respect of tax payable under Part I of the Federal Act for a taxation year, to pay a part or instalment computed by reference to an amount described in paragraph 161(4.01)(a), (b), (c) or (d) of the Federal Act, notwithstanding subsection 161(4.01) of the Federal Act, as it applies for the purpose of this Act, the individual is deemed for the purpose of subsection 161(2) of the Federal Act, as it applies for the purpose of this Act, to be liable to pay, in respect of tax payable under this Act for the year, a part or instalment computed by reference to the same paragraph, as it applies for the purpose of this Act. 2000, c. 4, s. 61.

Penalties

86 Subsections 162(1) to (3), (5), (7) and (11) and section 235 of the Federal Act apply for the purpose of this Act. 2000, c. 4, s. 61.

Failure to report, false statements and omissions

87 Subsection 163(1), subsection 163(2) as it would apply without the references to subsection 120(2) of the Federal Act therein, and subsections 163(2.1), (3) and (4) of the Federal Act apply for the purpose of this Act. 2000, c. 4, s. 61.

Penalty for late or deficient instalments

88 Section 163.1 of the Federal Act applies for the purpose of this Act. 2000, c. 4, s. 61.

Refunds

89 (1) Subsections 164(1) to (1.31), (1.5), (2) and (3) to (7) of the Federal Act apply for the purpose of this Act.

(2) Where a collection agreement is in effect and by reason of a decision referred to in subsection 164(4.1) of the Federal Act a repayment of tax, interest or penalties pursuant to that Act for a taxation year is made to a taxpayer or any security accepted pursuant to that Act for such tax, interest or penalties is surrendered to the taxpayer, subsection 164(4.1) of the Federal Act, as it applies for the purpose of this Act, applies to any overpayment of tax, interest or penalties pursuant to this Act for the year that arises by reason of the decision. 2000, c. 4, s. 61.

Objections

90 Sections 165, 166.1 and 166.2 of the Federal Act apply for the purpose of this Act. 2000, c. 4, s. 61.

DIVISION F — APPEALS TO SUPREME COURT OF NOVA SCOTIA

Appeals

91 (1) Section 169 of the Federal Act applies for the purpose of this Act.

(2) An appeal from an assessment under this Act may be taken in respect of any question relating

(a) in the case of an individual, to the determination of

(i) the individual's residence for the purpose of this Act,

(ii) the individual's income earned in the taxation year in the Province, as defined in Section 7, and the individual's income for the year, as defined in Section 7,

(iii) the amount of tax payable for a taxation year to the extent that tax payable is based on the tax payable under the Federal Act for that year, as defined in Section 7, and the amount of tax payable for a taxation year to the extent that tax payable is based on the individual's taxable income under the Federal Act for that year, or

(iv) any credit against, or deduction from, tax payable by the individual under this Act as provided for in this Act; and

(b) in the case of a corporation, to the determination of

(i) its taxable income earned in the year in the Province, as defined in subsection 64(3), or

(ii) the amount of tax payable for a taxation year based on the taxable income of the corporation for that year,

but no appeal from an assessment lies in respect of the computation of the tax payable under the Federal Act, as defined in Section 7, of the taxable income of an individual or of the taxable income of a corporation.

(3) An appeal to the Court is instituted by serving upon the Minister of Finance a notice of appeal in duplicate in prescribed form and by filing a copy thereof with the registrar of the Court or the local registrar of the Court for the county or district in which the taxpayer resides.

(4) A notice of appeal must be served upon the Minister of Finance by being sent by registered mail addressed to the deputy head.

(5) The taxpayer appealing shall set out in the notice of appeal a statement of the allegations of fact, the statutory provisions and the reasons that the taxpayer intends to submit in support of the taxpayer's appeal.

(6) The taxpayer appealing shall pay to the registrar of the Court a fee of \$15 upon the filing of the copy of the notice of appeal with the registrar. 2000, c. 4, s. 61.

Reply of Minister

92 (1) The Minister of Finance shall, within 60 days from the day the notice of appeal is received, or within such further time as the Court or a judge thereof may either before or after the expiration of that time allow, serve on the appellant and file in the Court a reply to the notice of appeal admitting or denying the facts alleged and containing a statement of such further allegations of fact and of such statutory provisions and reasons as the Minister of Finance intends to rely on.

(2) The Court or a judge thereof may, in the Court's or the judge's discretion, strike out a notice of appeal or any part thereof for failure to comply with subsection 91(5) and may permit an amendment to be made to a notice of appeal or a new notice of appeal to be substituted for the one struck out.

(3) The Court or a judge thereof may, in the Court's or the judge's discretion,

(a) strike out any part of a reply for failure to comply with this Section or permit the amendment of a reply; and

(b) strike out a reply for failure to comply with this Section and order a new reply to be filed within a time to be fixed by the order.

(4) Where a notice of appeal is struck out for failure to comply with subsection 91(5) and a new notice of appeal is not filed as and when permitted by the Court or a judge thereof, the Court or judge may, in the Court's or the judge's discretion, dispose of the appeal by dismissing it.

(5) Where a reply is not filed as required by this Section or is struck out under this Section and a new reply is not filed as ordered by the Court or a judge thereof within the time ordered, the Court may dispose of the appeal *ex parte* or after a hearing on the basis that the allegations of fact contained in the notice of appeal are true. 2000, c. 4, s. 61.

Appeal deemed action in Court

93 (1) Upon the filing of the material referred to in Sections 91 and 92, the matter is deemed to be an action in the Court and, unless the Court otherwise orders, ready for hearing.

(2) Any fact or statutory provision not set out in the notice of appeal or reply may be pleaded or referred to in such manner and upon such terms as the Court may direct. 2000, c. 4, s. 61.

Irregularities, extension of time and disposal of appeal

94 Sections 166, 167, 171, 179 and 179.1 of the Federal Act apply for the purpose of this Act. 2000, c. 4, s. 61.

Practice and procedure

95 Except as provided in regulations prescribed by the Governor in Council, the practice and procedure of the Court apply to every matter deemed to be an action under Section 93 and every judgment and order given or made in every such action may be enforced in the same manner and by the like process as a judgment or order given or made in an action commenced in the Court. 2000, c. 4, s. 61.

PART III — FINANCIAL INSTITUTIONS CAPITAL TAX

Interpretation of Part

96 (1) In this Part,

“authorized foreign bank” means an authorized foreign bank as defined in section 2 of the *Bank Act* (Canada);

“Canadian banking business” means a business carried on by an authorized foreign bank through a permanent establishment in Canada;

“capital”, in the case of a financial institution other than an authorized foreign bank, means its capital for a taxation year that is the amount, if any, by which the total at the end of the year of

(a) the amount of its long-term debt;

(b) the amount of its capital stock or, in the case of an institution incorporated without share capital, the amount of its members’ contributions;

(c) retained earnings, contributed surplus and other surpluses; and

(d) the amount of its reserves for the year except to the extent that the reserves were deducted in computing its income under Part I of the Federal Act for the year,

exceeds the total at the end of the year of

(e) the amount of any deficit deducted in computing its shareholders’ equity, including for this purpose, the amount of any provision for the redemption of preferred shares; and

(f) the amount of its deferred tax debit balance;

“capital deduction” means the amount, if any, determined under the regulations;

“financial institution” means

(a) a corporation that is a bank to which the *Bank Act* (Canada) applies;

(b) a trust company within the meaning of the *Trust and Loan Companies Act*; or

(c) a loan company within the meaning of the *Trust and Loan Companies Act*;

“guidelines” means the risk-weighting guidelines issued by the superintendent;

“long-term debt” means a financial institution’s subordinated indebtedness evidenced by obligations issued for a term of not less than five years;

“reserves” means reserves as defined in section 190 of the Federal Act;

“subordinated indebtedness” means subordinated indebtedness as defined in the *Bank Act* (Canada) with those changes that the circumstances may require;

“superintendent” means the federal Superintendent of Financial Institutions;

“taxable capital” means the amount, if any, by which the capital of a financial institution for the year exceeds its capital deduction;

“taxable capital employed in the Province for the year” means the amount equal to the financial institution’s taxable capital multiplied by the ratio for allocating taxable income earned in the year in the Province as determined under Part IV of the Federal Regulations.

(2) Notwithstanding the definition of “capital” in subsection (1), in the case of an authorized foreign bank, “capital” means the total of

(a) 10% of the total of all amounts, each of which is the risk-weighted amount at the end of the year of an on-balance sheet asset or an off-balance sheet exposure of the bank in respect of its Canadian banking business that the bank would be required to report under the guidelines if those guidelines applied and required a report at that time; and

(b) the total of all amounts, each of which is an amount at the end of the year in respect of the bank’s Canadian banking business that

(i) were the bank a bank listed in Schedule II to the *Bank Act* (Canada), would be required under the risk-based capital adequacy guidelines issued by the superintendent and applicable at that time to be deducted from the bank’s capital in determining the amount of capital available to satisfy the superintendent’s requirement that capital equal a particular proportion of risk-weighted assets and exposures, and

(ii) is not an amount in respect of a loss protection facility required to be deducted from capital under the superintendent’s guidelines respecting asset securitization applicable at that time.

(3) Subsection 190(2) and sections 190.2 and 190.21 of the Federal Act apply to this Part with those modifications that the circumstances may require. 2021, c. 6, s. 28.

Application of Part

97 This Part applies to every taxation year beginning after October 26, 2021. 2021, c. 6, s. 28.

Liability to pay tax

98 (1) Every financial institution with a permanent establishment in the Province at any time during a taxation year shall pay a tax under this Part for the taxation year equal to 4% of its taxable capital employed in the Province for the year.

(2) The amount of tax payable under this Part may not be reduced by a tax credit provided under this Act. 2021, c. 6, s. 28.

Regulations

99 The Governor in Council may make regulations

(a) respecting the amount of the capital deduction that may be claimed by a financial institution;

(b) respecting the allocation of a corporation's capital deduction among financial institutions related to it;

(c) respecting any matter or thing to be prescribed pursuant to this Part;

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

(e) respecting any matter or thing that the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Part. 2021, c. 6, s. 28.

Partial year

100 Where a taxation year of a corporation is less than 51 weeks, the tax payable determined under Section 98 for the year in respect of the corporation is reduced to that proportion of that amount that the number of days in the taxation year is of 365. 2021, c. 6, s. 28.

PART IV — ADMINISTRATION AND ENFORCEMENT

ADMINISTRATION

Application of Federal Act administration provisions

101 Sections 220, 221.1, 224, 225.1 and 225.2 of the Federal Act apply for the purpose of this Act. 2000, c. 4, s. 61.

Regulations

102 (1) The Governor in Council may make regulations

(a) prescribing anything that, by this Act, is to be prescribed or is to be determined or regulated by regulation;

(b) establishing a refund of tax for individuals in prescribed skilled occupations;

(c) prescribing the eligibility criteria and payment amounts for the refund established under clause (b);

(d) defining the Nova Scotia Child Benefit Program, the Nova Scotia Affordable Living Tax Credit and the Nova Scotia Poverty Reduction Credit;

(e) prescribing the eligibility criteria and payment amounts for the Nova Scotia Child Benefit Program, the Nova Scotia Affordable Living Tax Credit and the Nova Scotia Poverty Reduction Credit;

(f) prescribing anything necessary or advisable to enable the Crown in right of Canada to administer, on behalf of the Crown in right of the Province, the Nova Scotia Child Benefit Program, the Nova Scotia Affordable Living Tax Credit and the Nova Scotia Poverty Reduction Credit;

(g) providing in any case of doubt the circumstances in which, and the extent to which, the Federal Regulations apply;

(h) generally to carry out the purpose and the provisions of this Act.

(2) Except to the extent that they are inconsistent with any regulations made under subsection (1) or are expressed by any regulation made under subsection (1) to be inapplicable, the Federal Regulations made under subsection 221(1) of the Federal Act apply with necessary changes for the purposes of this Act with respect to all matters enumerated in that subsection.

(3) No regulation made under this Act or under the Federal Act if it is applicable with necessary changes has effect for the purpose of this Act until it has been published in the Royal Gazette or the Canada Gazette, as the case may be, but, when so published, a regulation is, where it so provides, effective with reference to a period before it was published.

(4) A regulation made pursuant to clause (1)(b) or (c) may be made retroactive to a day not earlier than January 1, 2022.

(5) Regulations made under this Act are regulations within the meaning of the *Regulations Act*. 2000, c. 4, s. 61; 2010, c. 3, s. 8; 2022, c. 4, s. 4.

Anti-avoidance rules

103 (1) In this Section,

“avoidance transaction” means a transaction

(a) that, but for this Section, would result, directly or indirectly, in a tax benefit; or

(b) that is part of a series of transactions, which series, but for this Section, would result, directly or indirectly, in a tax benefit,

but does not include a transaction that may reasonably be considered

(c) to have been undertaken or arranged primarily for bona fide purposes; or

(d) to be a transaction that would not result, directly or indirectly, in a misuse of the provisions of this Act

or an abuse having regard to the provisions of this Act, other than this Section, read as a whole;

“bona fide purposes” does not include transactions undertaken or arranged primarily for one or more of the following:

- (a) to obtain a tax benefit;
- (b) to reduce, avoid or defer a tax, or another amount payable as or in respect of tax, under any other federal or provincial Act;
- (c) to increase a refund of tax, or of another amount in respect of tax, under any other federal or provincial Act;

“tax benefit” means

- (a) a reduction, avoidance or deferral of tax, or of another amount, payable under this Act;
- (b) an increase in a refund of tax, or of another amount, under this Act;

“tax consequences” to a person means

- (a) the amount of the person’s
 - (i) income for the year, within the meaning of Section 7,
 - (ii) loss,
 - (iii) taxable income,
 - (iv) taxable income earned in Canada,
 - (v) income earned in the taxation year in the Province, within the meaning of Section 7,
 - (vi) income earned in the taxation year outside the Province, within the meaning of Section 7, or
 - (vii) taxable income earned in the year in the Province, within the meaning of Section 64; or
- (b) any amount, other than an amount referred to in clause (a), that is payable or refundable to the person under this Act or that is relevant for the purpose of determining any other amount referred to in this Section;

“transaction” includes an arrangement or event.

(2) Where a transaction is an avoidance transaction, the tax consequences to a person must be determined in a manner that is reasonable in the circumstances in order to deny a tax benefit that, but for this Section, would result, directly or indirectly, from that transaction or from a series of transactions that includes that transaction.

(3) Without limiting subsection (2),

- (a) any amount deducted in computing an amount referred to in the definition of “tax consequences” in subsection (1) may be allowed or disallowed in whole or in part;

(b) any deduction referred to in clause (a) or any other amount used in determining an amount payable or refundable under this Act may be allocated to any person;

(c) the nature of any payment or other amount may be recharacterized; and

(d) the tax effects that would otherwise result from the application of other provisions of this Act may be ignored,

in determining the tax consequences to a person in a manner that is reasonable in the circumstances in order to deny a tax benefit that would, but for this Section, result, directly or indirectly, from an avoidance transaction.

(4) Where a notice of assessment, reassessment or additional assessment reflecting the application of subsection (2) to a transaction has been sent to a person, or a notice of determination has been sent to the person, any other person is entitled, within 180 days after the date of the mailing of that notice, to request in writing that the Minister make an assessment, reassessment or additional assessment applying subsection (2) or otherwise make a determination respecting returns of income, assessments of tax, withholdings of tax or reassessments of tax.

(5) On receipt of a request by a person under subsection (4), the Minister shall consider the request and make an assessment, reassessment, additional assessment or a determination with respect to the person, notwithstanding the expiry of any time limits, except that an assessment, reassessment, additional assessment or a determination may be made under this subsection only to the extent that it may be reasonably regarded as relating to a transaction referred to in subsection (4).

(6) The tax consequences to any person, after the application of this Section, may only be determined through a notice of assessment, reassessment or additional assessment or determination under Section 79 or 80. 2005, c. 6, s. 25.

Restriction on issuance of tax-credit certificate

104 The Minister of Finance and Treasury Board of the Province may not issue a tax-credit certificate to a taxpayer pursuant to this Act if, in the opinion of the Minister of Finance and Treasury Board of the Province,

(a) any information provided by the taxpayer to obtain the certificate is false, misleading or fails to disclose a material fact; or

(b) the taxpayer has not complied with any provision of this Act or the regulations or the spirit and intent of this Act or the regulations. 2016, c. 2, s. 7.

ENFORCEMENT

Application of Federal Act collection provisions

105 Section 222 of the Federal Act applies for the purpose of this Act. 2000, c. 4, s. 61.

Application of certain Federal Act provisions

106 (1) Subsection 223(1), except paragraphs (b), (b.1), (c) and (d) thereof, and subsections 223(2) to (4) of the Federal Act apply for the purpose of this Act.

(2) Where a collection agreement is in effect, subsection (1) does not apply, but the Minister may proceed pursuant to section 223 of the Federal Act for the purpose of collecting any amount payable pursuant to this Act by a taxpayer. 2000, c. 4, s. 61.

Warrant to recover amount payable

107 The Minister of Finance may issue a warrant directed to the sheriff of any county or district in which any property of the taxpayer is located or situate, for the amount of the tax, interest and penalty, or any of them, owing by the taxpayer, together with interest thereon from the date of the issue of the warrant and the costs, expenses and poundage of the sheriff, and such warrant has the same force and effect as an execution order issued out of the Court. 2000, c. 4, s. 61.

Acquisition of debtor's property

108 Section 224.2 of the Federal Act applies for the purpose of this Act. 2000, c. 4, s. 61.

Payment of money seized from tax debtor

109 Section 224.3 of the Federal Act applies for the purpose of this Act. 2000, c. 4, s. 61.

Seizure of chattels

110 Section 225 of the Federal Act applies for the purpose of this Act. 2000, c. 4, s. 61.

Taxpayer leaving Canada

111 Section 226 of the Federal Act applies for the purpose of this Act. 2000, c. 4, s. 61.

Withholding taxes

112 (1) Subsections 227(1) to (5.2), (8), (8.2) to (9), (9.2) and (9.4) to (13) of the Federal Act apply for the purpose of this Act.

(2) The Minister may assess

(a) any person for any amount that has been deducted or withheld by that person pursuant to this Act or a regulation or pursuant to a provision of the Federal Act or of the Federal Regulations that applies for the purpose of this Act; and

(b) any person for any amount payable by that person pursuant to subsection 224(4) or (4.1) or section 227.1 or 235 of the Federal Act, as they apply for the purpose of this Act, or Section 116,

and, where the Minister sends a notice of assessment to that person, Sections 79 and 83 to 95 are applicable with such modifications as the circumstances require.

(3) Notwithstanding any other provision of this Act or any other enactment, the penalty for failure to remit an amount required to be remitted by a person on or before the day prescribed in the Federal Regulations made for the purpose of subsection 153(1) of the Federal Act, as both those regulations and that subsection apply for the purpose of this Act, applies only to the amount by which the total of all amounts so required to be remitted on or before that day exceeds \$500 unless the person required to remit the amount has, knowingly or under circumstances that amount to gross negligence, delayed in remitting the amount or has, knowingly or under circumstances that amount to gross negligence, remitted an amount less than the amount required to be remitted. 2000, c. 4, s. 61.

Liability of directors for failure to deduct

113 Section 227.1 of the Federal Act applies for the purpose of this Act. 2000, c. 4, s. 61.

Application of general provisions

114 Section 230 of the Federal Act applies for the purpose of this Act. 2000, c. 4, s. 61.

Application of certain Federal Act provisions

115 (1) Sections 231 to 231.5 of the Federal Act apply for the purpose of this Act.

(2) Sections 232, 233 and 236 of the Federal Act apply for the purpose of this Act. 2000, c. 4, s. 61.

Violation of regulations under Federal Act

116 (1) Every person who fails to comply with a regulation made under paragraph 221(1)(d) or (e) of the Federal Act as it applies by virtue of subsection 102(2) is liable in respect of each failure to so comply to a penalty of \$10 a day for each day of default but not exceeding in all \$2,500.

(2) Every person who fails to comply with a regulation made under Section 102 or incorporated by reference by virtue of subsection 104(2) is liable to a penalty of \$10 a day for each day of default but not exceeding in all \$2,500. 2000, c. 4, s. 61.

OFFENCES

Failure to file

117 (1) Every person who fails to file a return as and when required by or pursuant to this Act or a regulation, or by or pursuant to a provision of the Federal Act or of the Federal Regulations as the provision applies for the purpose of this Act, or who fails to comply with any of subsections 153(1), 227(5) and 230(3), (4) and (6) and sections 231 to 231.5 and 232 of the Federal Act, as it applies for the purpose of this Act, or with an order made pursuant to subsection (2), is guilty of an offence and, in addition to any penalty otherwise provided, is liable on summary conviction to

(a) a fine of not less than \$1,000 and not more than \$25,000; or

(b) both the fine referred to in clause (a) and imprisonment for a term not exceeding 12 months.

(2) Subsection 238(2) of the Federal Act applies for the purpose of this Act.

(3) Where a person is convicted pursuant to this Section for failure to comply with this Act or a regulation or a provision of the Federal Act or of the Federal Regulations that applies, for the purpose of this Act, that person is not liable to a penalty pursuant to subsection 227(8), (8.5), (9) or (9.5) of the Federal Act, as those subsections apply for the purpose of this Act, or pursuant to Section 86 or 116 for the same failure unless that person was assessed for that penalty or that penalty was demanded from that person before the information or complaint giving rise to the conviction was laid or made. 2000, c. 4, s. 61.

Offences

118 Subsections 239(1) and (1.1) of the Federal Act apply for the purpose of this Act. 2000, c. 4, s. 61.

Where collection agreement

119 Where a collection agreement is entered into and proceedings under section 238 or 239 of the Federal Act are taken against any person, the Minister may take or refrain from any action against such person contemplated by Section 117 or 118, as the case may be. 2000, c. 4, s. 61.

Revealing confidential information

120 (1) Every person who, while employed in the administration of this Act, knowingly

(a) communicates or knowingly allows to be communicated to any person not legally entitled thereto any information obtained by or on behalf of the Minister for the purpose of this Act;

(b) allows any person not legally entitled thereto to inspect or to have access to any book, record, writing, return or other document obtained by or on behalf of the Minister for the purpose of this Act; or

(c) uses, other than in the course of that person's duties in connection with the administration or enforcement of this Act, any information obtained by or on behalf of the Minister for the purpose of this Act,

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 12 months or to both a fine and imprisonment.

(2) Subsection (1) does not apply to the communication of information between

(a) the Minister of National Revenue for Canada and the Minister of Finance and Treasury Board of the Province;

(b) the Minister of Finance and Treasury Board of the Province or the Minister of National Revenue for Canada, acting on behalf

of the Province, and the provincial treasurer, provincial secretary-treasurer or minister of finance of the government of

- (i) an agreeing province, or
- (ii) a non-agreeing province, as defined in subsection 129(1), to which an adjusting payment may be made under subsection 129(2); or
- (c) the Minister of National Revenue for Canada and the Minister of Finance for Canada, where that information is provided pursuant to subsection (3).

(3) The Minister of National Revenue for Canada may provide any information obtained by or on behalf of the Province for the purpose of this Act to an official of the Minister of Finance for Canada solely for the purpose of the formulation or evaluation of fiscal policy. 2000, c. 4, s. 61; 2014, c. 34, s. 21; 2021, c. 6, s. 29.

Officers, etc., of corporations

121 Section 242 of the Federal Act applies for the purpose of this Act. 2000, c. 4, s. 61.

Power to decrease punishment

122 Section 243 of the Federal Act applies for the purpose of this Act. 2000, c. 4, s. 61.

PROCEDURE AND EVIDENCE

Procedure and evidence

123 (1) Subsections 244(1) to (5), (7) to (11), (13) to (18) and (20) to (22) of the Federal Act apply for the purpose of this Act.

- (2) Judicial notice must be taken of
 - (a) all orders or regulations made under this Act; and
 - (b) a collection agreement entered into under this Act or any agreement for the collection by Canada of the tax imposed under the income tax statute of an agreeing province,

without such orders, regulations or agreements being specially pleaded or proven.

(3) For the purpose of this Act, anything sent by first-class mail or its equivalent is deemed to have been received by the person to whom it is sent on the day that it was mailed except that a remittance of an amount deducted or withheld as required by this Act or a regulation or by a provision of the Federal Act or of the Federal Regulations, that applies for the purpose of this Act, as it applies for the purpose of this Act, is deemed to have been remitted on the day it is received by the Minister of Finance.

(4) A document purporting to be a collection agreement entered into under this Act or an agreement with Canada for the collection of tax imposed under the income tax statute of an agreeing province that is

- (a) published in the Canada Gazette; or

- (b) certified as such by or on behalf of
 - (i) the Minister of Finance, or
 - (ii) the provincial treasurer, the provincial secretary-treasurer or the minister of finance of the appropriate agreeing province,

must be received as prima facie evidence of the contents thereof.

- (5) Every certificate by the Minister of Finance as to
 - (a) a taxpayer's tax payable under the Federal Act, as defined in Section 7;
 - (b) a taxpayer's income for the year, as defined in Section 7;
 or
 - (c) the taxable income of a corporation,

is prima facie evidence that a taxpayer's tax payable under the Federal Act, a taxpayer's income for the year or the taxable income of a corporation, as the case may be, is in the amount set out therein.

(6) Where a collection agreement is entered into, any document or certificate that is executed or issued by the Minister, the Commissioner of Revenue or an official of the Canada Revenue Agency on behalf or in place of the Minister of Finance, the Minister of Finance's deputy or an officer of the Minister of Finance's Department, is deemed, for all purposes of this Act, to be executed or issued by the Minister of Finance, the Minister of Finance's deputy or an officer of the Minister of Finance's Department, as the case may be.

(7) Where no collection agreement is entered into, a reference in this Section to the Royal Canadian Mounted Police is to be construed as a reference to the police force carrying out the duties of a provincial police in the Province. 2000, c. 4, s. 61.

Tax avoidance

124 Sections 245 and 246 of the Federal Act apply for the purpose of this Act. 2000, c. 4, s. 61.

PART V — COLLECTION OF TAX

DIVISION A — COLLECTION AGREEMENT

Ratification of Collection Agreement

125 (1) The Collection Agreement entered into between the Government of Canada and the Government of the Province on December 29, 1961, is ratified and confirmed, and any reference in the said Collection Agreement to Chapter 3 of the Acts of 1961, the *Individual and Corporation Income Tax Act*, is to be read and construed as a reference to this Act.

(2) The Minister of Finance and Treasury Board of the Province may, on behalf of the Government of the Province,

- (a) enter into an agreement amending the terms and conditions of the Collection Agreement referred to in subsection (1);

- (b) enter into a new collection agreement; or
- (c) enter into an agreement amending the terms and conditions of the new collection agreement referred to in clause (b).

(3) Without in any way limiting Chapter 10 of the Acts of 1961, the *Tax Collection Agreement (1961) Act*, when a collection agreement is in effect, the Minister of National Revenue for Canada on behalf of the Minister of Finance and Treasury Board for the Province may employ all the powers, perform all the duties and exercise any discretion that the Minister of Finance or the deputy head has under this Act, including the discretion to refuse to permit the production in judicial or other proceedings in the Province of any document that is not, in the opinion of the Minister of National Revenue for Canada, in the interests of public policy to produce.

(4) Without in any way limiting Chapter 10 of the Acts of 1961, the *Tax Collection Agreement (1961) Act*, when a collection agreement is in effect, the Commissioner of Revenue may

- (a) employ all the powers, perform the duties and exercise any discretion that the Minister has under subsection (3) or otherwise under this Act; and
- (b) designate officers of the Canada Revenue Agency to carry out such functions, duties and powers as are similar to those that are exercised by them on behalf of the Commissioner of Revenue under the Federal Act. 2000, c. 4, s. 61; 2014, c. 34, s. 22.

PAYMENTS ON ACCOUNT

Application of tax payment

126 (1) A collection agreement may provide that where a payment is received by the Minister of Finance on account of tax payable by a taxpayer for a taxation year under this Act, the Federal Act or an income tax statute of another agreeing province, or under any two or more of such Acts or statutes, the payment so received may be applied by the Minister toward the tax payable by the taxpayer under any such Act or statute in such manner as may be specified in the agreement, notwithstanding that the taxpayer directed that the payment be applied in any other manner or made no direction as to its application.

(2) Any payment or part thereof applied by the Minister in accordance with a collection agreement toward the tax payable by a taxpayer for a taxation year under this Act

- (a) relieves the taxpayer of liability to pay such tax to the extent of the payment or part thereof so applied; and
- (b) is deemed to have been applied in accordance with a direction made by the taxpayer. 2000, c. 4, s. 61.

DEDUCTIONS AT SOURCE

Restriction on application of tax payment

127 Where a collection agreement is in effect and an amount is remitted to the Minister pursuant to subsection 153(1) of the Federal Act, as it applies for the

purpose of this Act, on account of the tax of an individual who is resident on the last day of the taxation year in another agreeing province

- (a) no action lies for recovery of such amount by that individual;
- and
- (b) the amount may not be applied in discharge of any liability of that individual under this Act. 2000, c. 4, s. 61.

Restriction on application of tax payment

128 (1) Where a collection agreement is entered into, an individual resident in the Province on the last day of the taxation year is not required to remit any amount on account of tax payable by the individual under this Act for the taxation year to the extent of the amount deducted or withheld on account of the individual's tax for that year under the income tax statute of another agreeing province.

(2) Where the total amount deducted or withheld on account of tax payable under this Act and under the income tax statute of another agreeing province by an individual resident in the Province on the last day of the taxation year to whom subsection (1) applies exceeds the tax payable by the individual under this Act for that year, the provisions of the Federal Act that apply for the purposes of this Act because of Section 89 apply in respect of such individual as though the excess were an overpayment under this Act. 2000, c. 4, s. 61.

DIVISION B — NON-AGREEING PROVINCES

Non-agreeing provinces

129 (1) In this Section,

“adjusting payment” means a payment, calculated in accordance with this Section, made by or on the direction of the Province to a non-agreeing province;

“amount deducted or withheld” does not include any refund made in respect of that amount;

“non-agreeing province” means a province that is not an agreeing province.

(2) Where, in respect of a taxation year a non-agreeing province is authorized to make a payment to the Province that, in the opinion of the Minister of Finance corresponds to an adjusting payment, the Governor in Council may authorize the Minister of Finance to make an adjusting payment to that non-agreeing province and enter into any agreement that may be necessary to carry out the purposes of this Section.

(3) When a collection agreement is in effect, an adjusting payment that may be made pursuant to subsection (2) may be made by the Government of Canada, where it has agreed to act on the direction of the Province, as communicated by the Minister of Finance and Treasury Board of the Province to the Minister of National Revenue for Canada.

(4) The adjusting payment to be made under this Section must be in an amount that is equal to the aggregate of the amounts deducted or withheld

under subsection 153(1) of the Federal Act, as it applies for the purpose of this Act, in respect of the tax payable for a taxation year by individuals who

- (a) file returns under the Federal Act;
- (b) are taxable thereunder in respect of that year; and
- (c) are resident on the last day of that year in the non-agreeing province to which the adjusting payment is to be made.

(5) Where an adjusting payment is to be made to a non-agreeing province and there has been an amount deducted or withheld under subsection 153(1) of the Federal Act, as it applies for the purpose of this Act, on account of the tax for a taxation year of an individual who is taxable under the Federal Act in respect of that year and who is resident on the last day of that taxation year in the non-agreeing province,

- (a) no action lies for the recovery of such amount by that individual; and
- (b) the amount may not be applied in discharge of any liability of that individual under this Act.

(6) Where an adjusting payment to a non-agreeing province is to be made under this Section for a taxation year, an individual resident in the Province on the last day of the taxation year is not required to remit any amount on account of income tax payable, or that might have been payable, by the individual under this Act for the taxation year to the extent of the amount deducted or withheld on account of the individual's income tax for that year under the law of that non-agreeing province.

(7) Where an adjusting payment to a non-agreeing province is to be made under this Section for a taxation year and the total amount deducted or withheld on account of the tax payable under this Act and on account of the income tax payable under the law of the non-agreeing province by an individual resident in the Province on the last day of the taxation year to whom subsection (6) applies exceeds the tax payable by the individual under this Act for that year, the provisions of the Federal Act that apply for the purposes of this Act because of Section 89 apply in respect of such individual as though the excess were an overpayment under this Act.

(8) Where a collection agreement is entered into and the Government of Canada has agreed in respect of a taxation year to carry out the direction of the Province and to make an adjusting payment on behalf of the Province, the adjusting payment

- (a) must be made out of any money that has been collected on account of tax under this Act for any taxation year; and
- (b) is the amount calculated by the Minister to be the amount required to be paid under subsection (4),

and the payment thereof discharges any obligation the Government of Canada may have with respect to the payment to the Province of any amount deducted or withheld under subsection 153(1) of the Federal Act, as it applies for the purpose of this Act, to which subsection (5) applies. 2000, c. 4, s. 61; 2014, c. 34, s. 23.

DIVISION C — RECIPROCAL ENFORCEMENT OF JUDGMENTS

Regulations

130 The Governor in Council may make regulations to enable the enforcement of judgments in respect of taxes in agreeing provinces to be enforced in the Province. 2000, c. 4, s. 61.

PART VI — OFFSHORE AREA

No payment by corporation for offshore area profits

131 (1) In this Section, “offshore area” means Sable Island and the submarine area of the Province that is between the inner limits and the outer limits described in Schedule I, as amended from time to time, of the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

(2) No tax is payable under this Act for a taxation year by a corporation in respect of the taxable income earned by the corporation in the year in the offshore area until the Legislature otherwise determines. 2000, c. 4, s. 61.

CHAPTER I-4

**An Act Respecting an Agreement
between the Government of Canada
and the Government of Nova Scotia
for the Settlement of Questions
Respecting Indian Reserve Lands**

Table of Contents

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

	Section
Short title.....	1
Agreement.....	2
Effect of Agreement.....	3
Powers of Governor in Council.....	4
Schedule	

Short title

1 This Act may be cited as the *Indian Lands Act*. R.S., c. 219, s. 1.

Agreement

2 The Minister of Natural Resources and Renewables or such other member of the Executive Council as is thereunto authorized by the Governor in Council may, on behalf of the Government of the Province, enter into and carry out an agreement in the form in the Schedule to this Act for the settlement of questions respecting Indian Reserve Lands. R.S., c. 219, s. 2.

Effect of Agreement

3 When an Agreement is entered into pursuant to this Act, the terms of the Agreement have effect as if they were contained in an Act of the Legislature. R.S., c. 219, s. 3.

Powers of Governor in Council

4 The Governor in Council may do, or may authorize a member of the Executive Council to do, every act necessary or proper for the exercise or enjoyment of any power, privilege or right conferred upon or vested in the Government of the Province under the said Agreement. R.S., c. 219, s. 4.

SCHEDULE

MEMORANDUM OF AGREEMENT made this day of , 195 . . .

BETWEEN:

THE GOVERNMENT OF CANADA, hereinafter referred to as "Canada",
of the first part,

- and -

THE GOVERNMENT OF THE PROVINCE OF NOVA SCOTIA, hereinafter referred to as "Nova Scotia", of the second part.

WHEREAS since the enactment of the British North America Act, 1867, certain lands in the Province of Nova Scotia set aside for Indians have been surrendered to the Crown by the Indians entitled thereto;

AND WHEREAS from time to time Letters Patent have been issued under the Great Seal of Canada purporting to convey said lands to various persons;

AND WHEREAS two decisions of the Judicial Committee of the Privy Council relating to Indian lands in the Provinces of Ontario and Quebec lead to the conclusion that said lands could only have been lawfully conveyed by authority of Nova Scotia with the result that the grantees of said lands hold defective titles and are thereby occasioned hardship and inconvenience;

NOW THIS AGREEMENT WITNESSETH that the parties hereto, in order to settle all outstanding problems relating to Indian reserves in the Province of Nova Scotia and to enable Canada to deal effectively in future with lands forming part of said reserves, have mutually agreed subject to the approval of the Parliament of Canada and the Legislature of the Province of Nova Scotia as follows:

- 1 In this agreement, unless the context otherwise requires,
 - (a) "Province" means the Province of Nova Scotia;
 - (b) "reserve lands" means those reserves in the Province referred to in the appendix to this agreement;
 - (c) "patented lands" means those tracts of land in the Province in respect of which Canada accepted surrenders of their rights and interests therein from the Indians entitled to the use and occupation thereof and in respect of which grants were made by Letters Patent issued under the Great Seal of Canada;
 - (d) "minerals" includes salt, oil, natural gas, infusorial earth, ochres or paints, the base of which is found in the soil, fire clays, carbonate of lime, sulphate of lime, gypsum, coal, bituminous shale, albertite and uranium, but not sand, gravel and marl;
 - (e) "Indian Act" means the Indian Act, Revised Statutes of Canada 1952, cap. 149, as amended from time to time and includes any re-enactment, revision or consolidation thereof;
 - (f) "surrender" means the surrender for sale of reserve lands or a portion thereof pursuant to the Indian Act but does not include a surrender of rights and interests in reserve lands for purposes other than sale; and
 - (g) "public highways" means every road and bridge in reserve lands, constructed for public use by and at the expense of the Province or any municipality in the Province and in existence at the coming into force of this agreement.

2 All grants of patented lands are hereby confirmed except insofar as such grants purport to transfer to the grantees any minerals and said minerals are hereby acknowledged to be the property of the Province.

3 Nova Scotia hereby transfers to Canada all rights and interests of the Province in reserve lands except lands lying under public highways and minerals.

4 (1) In the event that a band of Indians in the Province becomes extinct, Canada shall revert in the Province all the rights and interests transferred to it under this agreement in the reserve lands occupied by such band prior to its becoming extinct.

(2) For the purpose of subparagraph (1) a band does not become extinct by enfranchisement.

5 The mining regulations made from time to time under the Indian Act apply to the prospecting for, mining of or other dealing in all minerals in unsurrendered reserve lands and all minerals reserved in the grants referred to in paragraph 2, and any payment made pursuant to such regulations whether by way of rent, royalty, or otherwise, shall be paid to the Receiver General of Canada for the use and benefit of the Indian band or Indians from whose reserve lands such monies are so derived.

6 (1) Canada shall forthwith notify Nova Scotia of any surrender and Nova Scotia may within thirty days of receiving such notification elect to purchase the surrendered lands at a price to be agreed upon.

(2) If Nova Scotia fails to elect within such thirty-day period, Canada may dispose of the surrendered lands without further reference to Nova Scotia.

(3) Where a surrender is made under the condition that the surrendered lands be sold to a named or designated person at a certain price or for a certain consideration, Nova Scotia shall exercise its election subject to that price or consideration.

(4) Subject to subparagraph (3) of this paragraph, should Canada and Nova Scotia be unable, within thirty days of the date of an election to purchase being made, to reach agreement on the price to be paid by Nova Scotia for any surrendered lands, the matter shall be referred to arbitrators as follows:

- (a) Canada and Nova Scotia shall each appoint one arbitrator, and the two arbitrators so appointed shall appoint a third arbitrator;
- (b) the decision of the arbitrators as to the price to be paid by Nova Scotia for the surrendered lands shall be final and conclusive; and
- (c) the costs of arbitration shall be borne equally by Canada and Nova Scotia.

IN WITNESS WHEREOF has hereunto set hand on behalf of the Government of Canada and has hereunto set his hand on behalf of the Government of the Province of Nova Scotia.

Signed on behalf of the)
 Government of Canada by)
)
)
)
 in the presence of:)
)
)
)

Signed on behalf of the)
 Government of the Province of)
 Nova Scotia by)
)
)
)
 in the presence of:)
)

APPENDIX

Reserve No.	Name of Reserve	Location of Reserve
ANNAPOLIS COUNTY		
7	Kedgemakooge	10 parcels of land lying along the shore of Kedgemakooge (Kajimijik) Lake, together with Richie and Muise Islands and the unnamed Island lying between the two above-named Islands, approximately 12 miles east of Caledonia.
6	Bear River	See Digby County.
ANTIGONISH COUNTY		
23	Pomquet and Afton	(a) parcel of land on both sides of Pomquet River, one mile west of Heatherton; (b) 2 parcels of land, approximately 2 miles east of Heatherton, on the south side of Highway No. 4.
CUMBERLAND COUNTY		
22	Franklin Manor	Approximately 10 miles southwest of Amherst, west of Hebert River.
DIGBY COUNTY		
6	Bear River	Approximately ¼ of a mile south of the town of Bear River on the Digby–Annapolis county line. Part of this reserve is in Annapolis County.
HALIFAX COUNTY		
17	Beaver Lake	Approximately 11 miles northeast from Sheet Harbour on the west side of Highway No. 24.
HANTS COUNTY		
13	Shubenacadie (Grand Lake)	On the west shore of Shubenacadie Grand Lake near Hants and Halifax county line.
14	Shubenacadie	Approximately 2 miles west of Shubenacadie on both sides of Indian Brook on the north side of the road from Nine Mile River to Shubenacadie.

- 34 St. Croix 7 miles south of Windsor at the north end of St. Croix Lake.

INVERNESS COUNTY

- 2 Whycomomagh At the east end of St. Patrick channel, approximately one mile east of the town of Whycomomagh.
- 4 Malagawatch At the entrance of Denys Bay at the north shore of Malagawatch Harbour.
- 25 Margaree A small reserve on the west bank of Margaree River about ¼ of a mile north of the junction of the southwest and northeast branches of Margaree River.
- 26 Port Hood Small reserve near Port Hood.

LUNENBURG COUNTY

- 19 Pennal Between Camp Lake and Wallaback Lake, approximately 4 miles northeast of New Ross Settlement.
- 20 New Ross Near the northeast end of Wallaback Lake, about 10 miles northeast of the Pennal Indian Reserve No. 19.
- 21 Gold River On the west side of Gold River near its mouth, approximately 3 miles west of Chester Basin Settlement.

PICTOU COUNTY

- 24 Fishers Grant On the south shore of the entrance into Pictou Harbour, about 4 miles north of the town of Trenton.
- 31 Merigomish Harbour Indian (or Chapel) Island and Mules (or Mooley) Island, southwest of Olding Island in Merigomish Harbour.

QUEENS COUNTY

- 10 Ponhook Lake On the east shore of Medway River at the outlet of Ponhook Lake, 2 miles north of Bang Falls Settlement.
- 11 Medway River On the west shore of Medway River, opposite Ponhook Lake Indian Reserve No. 10.
- 12 Wild Cat Along both sides of Wildcat River, west of Molega Lake and north of Ponhook Lake, about 2 miles south of the town of South Brookfield.

RICHMOND COUNTY

- 5 Chapel Island Approximately 5 miles east of St. Peters, on Highway No. 4, including the Chapel Island and two other adjacent Islands.

VICTORIA COUNTY

- 1 Middle River At the mouth of the Middle River on Highway No. 5, approximately 8 miles west of Baddeck.

CAPE BRETON COUNTY

- 3 Escasoni On the north shore of East Bay of Bras d'Or Lake, approximately 20 miles east of Sydney.

1959, c. 3, Sch.



CHAPTER I-5

**An Act to Provide for Assistance
to Industrial Enterprises in Nova Scotia**

Table of Contents

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

	Section
Short title.....	1
Interpretation.....	2
Powers of Governor in Council	3
Industrial Loan Fund.....	4
Loans.....	5
Use of money in Fund.....	6
Guarantee to be charge on Fund	7
Acquisition of and disposition of property	8
Industrial Loan Board	9
Duties of Board	10
Administration expenses	11
Regulations.....	12
Execution of instrument.....	13

Short title

1 This Act may be cited as the *Industrial Loan Act*. R.S., c. 224, s. 1.

Interpretation

2 In this Act,
“Board” means the Industrial Loan Board constituted under this Act;
“Fund” means the Industrial Loan Fund established under this Act;
“industry” means any industry, business, trade or undertaking designated by the regulations as an industry;
“Minister” means the Minister of Economic Development. R.S., c. 224, s. 2.

Powers of Governor in Council

3 Subject to this Act and the regulations, the Governor in Council, for the purpose of establishing or developing industries within the Province, may from time to time

(a) make loans to, or guarantee loans of, any person or persons for the purpose of acquiring land, buildings, machinery, implements, plant or equipment;

(b) make loans to, or guarantee loans of, any person for the purpose of providing working capital for any industry;

(c) pay off or retire existing debts or obligations of a person engaged in an industry where, in the opinion of the Minister, it is necessary

or desirable to do so in order to improve the security of any loan or other assistance to that person;

(d) enter into agreements with the Government of Canada or with any agency or instrument of the Government of Canada, or with any other persons, for the purpose of carrying out the intent and purposes of this Act;

(e) do such other matters or things and exercise such other powers as may be considered necessary for the better carrying out of the provisions of this Act. R.S., c. 224, s. 3.

Industrial Loan Fund

4 (1) The Industrial Assistance Fund established pursuant to the former *The Industrial Assistance Act* is continued.

(2) The name of the said Fund is changed to the Industrial Loan Fund and any reference in any Act or regulations to the Industrial Assistance Fund is to be construed as a reference to the Industrial Loan Fund.

(3) The Governor in Council may from time to time transfer to the fund and charge to the Capital Account such sum or sums as are considered necessary for the purpose of this Act or, if it is considered expedient to do so, the Minister of Finance and Treasury Board with the approval of the Governor in Council may transfer the said sum or sums out of the Special Reserve Account of the Province or out of the revenue of the Province for any year or years. R.S., c. 224, s. 4.

Loans

5 (1) All the loans made under this Act must be made out of the Fund.

(2) The Governor in Council may from time to time cancel all or any part of any commitment respecting any sum of money in the Industrial Development Fund and upon such cancellation being made, the sums of money must thereupon be credited to the Industrial Loan Fund.

(3) All repayments and all recoveries made in respect of any loan or other transaction out of the Fund, the Industrial Assistance Fund or the Industrial Development Fund must be paid or credited to the Fund and may be reloaned in accordance with the provisions of this Act. R.S., c. 224, s. 5.

Use of money in Fund

6 Subject to this Act, all money from time to time at the credit of the Fund may be employed or re-employed for the purpose of this Act. R.S., c. 224, s. 6.

Guarantee to be charge on Fund

7 All guarantees made under this Act or made under any other Act mentioned herein are a charge upon the Fund to the amount of the guarantees from time to time outstanding and the Fund may not be reduced below an amount sufficient to cover the liability of the Province, contingent or otherwise, in respect of all guarantees so made. R.S., c. 224, s. 7.

Acquisition of and disposition of property

8 (1) The Governor in Council may, where the Governor in Council considers it to be in the best interest of the Province to do so, purchase or otherwise acquire any property that is the subject of a mortgage or charge in respect of any loan or guarantee made under this Act or under any Act referred to herein.

(2) The Governor in Council may sell, lease or otherwise dispose of any such real or personal property for such consideration and on such terms and conditions as the Governor in Council considers advisable.

(3) The proceeds of any such sale, lease or disposal must be paid to the Minister of Finance and Treasury Board and credited to the Fund. R.S., c. 224, s. 8.

Industrial Loan Board

9 (1) The Governor in Council may appoint a Board to be called the Industrial Loan Board, consisting of such number of persons as the Governor in Council from time to time determines, and the Governor in Council may designate one of the members of the Board to be Chair thereof.

(2) Each member of the Board holds office for a period of three years unless the member's appointment is sooner revoked and all members are eligible for reappointment.

(3) The members of the Board, excepting employees in the civil service, are entitled to receive such remuneration and allowances as may be determined by the Governor in Council. R.S., c. 224, s. 9.

Duties of Board

10 The Board shall study and examine applications for loans or guarantees and make recommendations thereon to the Minister, and shall generally perform such further or other matters as may be provided for in the regulations. R.S., c. 224, s. 10.

Administration expenses

11 The administration expenses of the Minister and of the Board are administration expenses of the Department of Economic Development and may not be a charge upon the Fund. R.S., c. 224, s. 11.

Regulations

12 (1) The Governor in Council may from time to time make regulations, not inconsistent with this Act and in relation to any class or classes of industry,

- (a)** designating industries or types of industries to which this Act applies;
- (b)** limiting the amounts of loans or guarantees;
- (c)** for the examination and audit of accounts and for the inspection of premises, plant and equipment in respect of which a loan or guarantee has been made;

(d) prescribing the purposes for which loans or guarantees may be made;

(e) prescribing the amount and nature of the security to be required before a loan or guarantee is made;

(f) prescribing the manner in which applications for loans or guarantees may be made;

(g) prescribing the terms and conditions upon which loans or guarantees may be made;

(h) prescribing further or other or additional functions, duties or powers of the Board;

(i) for the better or more efficient carrying out of the purposes and objects of this Act.

(2) Every such regulation is effective upon publication in the Royal Gazette.

(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*. R.S., c. 224, s. 12.

Execution of instrument

13 All agreements, deeds, conveyances, releases and other instruments whatsoever relating to any loans or guarantees made under this Act or under any Act referred to herein may be executed by the Minister on behalf of the Crown in right of the Province. R.S., c. 224, s. 13.

CHAPTER I-6

**An Act Respecting the Closing of Industry
or Industrial Enterprises in Nova Scotia**

Table of Contents

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

	Section
Short title.....	1
Interpretation.....	2
Notice of proposed closure of industry.....	3
Inquiry.....	4
Reopening where failure to comply with Act.....	5
Penalty.....	6
Exemption.....	7

Short title

1 This Act may be cited as the *Industry Closing Act*. R.S., c. 226, s. 1.

Interpretation

2 In this Act,

“employee” means every person engaged in any industry who is in receipt of or entitled to compensation for labour performed in the Province whether the labour is performed on the premises of the employer or of the employee or elsewhere and whether the compensation is on the basis of time or of the amount of work performed or piece work;

“employer” means every person, corporation, partnership or firm engaged in any industry and directly or indirectly responsible for the payment of wages to 50 or more employees;

“industry” includes every business, calling, trade, undertaking and work of any nature whatsoever and any branch thereof in which there are employers and 50 or more employees except a seasonal industry and the mining and agricultural industries;

“Minister” means the Minister of Economic Development. R.S., c. 226, s. 2.

Notice of proposed closure of industry

3 (1) Where an employer engaged in an industry is about to close down, discontinue or abandon the whole of the industry or any portion thereof that will or may affect 50 or more employees of the industry, the employer shall before the closing down, discontinuance or abandonment give notice thereof to the Minister.

(2) The notice must be given at least three months before the closing down, discontinuance or abandonment and must be in such form and contain such information as the Minister may by regulation require.

(3) No employer shall close down, discontinue or abandon the whole or any part of any such industry within three months of the giving of such notice. R.S., c. 226, s. 3.

Inquiry

4 On the report and recommendation of the Minister, the Governor in Council has power to conduct any inquiry or examination into and concerning the proposed closing down, discontinuance or abandonment and such closing down, discontinuance or abandonment is deemed to be a public matter within the meaning of the *Public Inquiries Act*. R.S., c. 226, s. 4.

Reopening where failure to comply with Act

5 Where any industry or any part thereof is closed down, discontinued or abandoned so as to affect 50 or more employees and this Act has not been complied with, the Minister may cause the industry to be reopened at the expense of the employer for such time not exceeding three months as the Minister may determine. R.S., c. 226, s. 5.

Penalty

6 Any employer who closes down, discontinues or abandons any industry without giving the notice required by Section 3 is liable to a penalty of \$100 and every day that the industry was closed down, discontinued or abandoned in contravention of Section 3 constitutes a separate offence. R.S., c. 226, s. 6.

Exemption

7 This Act does not apply to any industry or part of an industry which has arisen or that has been developed as a result of World War II except to the extent that the industry was in operation prior to the commencement of the said war. R.S., c. 226, s. 7.

CHAPTER I-7

An Act Respecting Insurance

Table of Contents

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

	Section
Short title.....	1
Interpretation	
Interpretation.....	2
PART I	
General	
Superintendent and other personnel.....	3
Duty and powers of Superintendent and regulations.....	4
Licence.....	5
Entry and inspection of documents.....	6
Regulations.....	7
Agreements.....	8
Compensation association.....	9
Representing prohibited insurer.....	10
Signature and commission of agents.....	11
Violation of law not necessarily fatal.....	12
Limitation on exclusion.....	13
Statement of agent or broker.....	14
Filing and use of form of policy.....	15
Substitution of successor.....	16
PART II	
Nova Scotia Insurance Review Board	
Interpretation of Part.....	17
Nova Scotia Insurance Review Board.....	18
Membership.....	19
Chair and Vice-chair.....	20
Remuneration of members.....	21
Conflict of interest.....	22
Personnel.....	23
Expenses.....	24
Rules of practice and procedure.....	25
Powers and duties of Chair.....	26
Quorum.....	27
Panels.....	28
Vacancy does not impair.....	29
Powers, privileges and immunities.....	30
Oaths, certificates and subpoenas.....	31
Evidence.....	32
Adjournment of hearing.....	33
Representation by counsel.....	34
Exclusive jurisdiction.....	35
Determination of question of fact.....	36
Orders.....	37
Form of order.....	38
Binding determination.....	39
Final decision.....	40
Costs.....	41

Appeal 42
 Regulations 43

PART III

Insurance Contracts in the Province

Application of Part 44
 Delivery and contents of policy 45
 Copy of application 46
 Effect of delivery of policy 47
 Default in paying and payment of premium 48
 Assignment of refund of premium 49
 Proof of loss form 50
 Commencement of proceeding 51
 Payment to agent or broker 52
 Agent holds money in trust 53
 Payment into court 54
 Action against insurer 55
 Notice to insured or insurer 56
 Imperfect compliance 57
 Fire insurance as security 58
 Determination by appraisers or umpire 59
 Court may relieve against forfeiture 60
 Canadian dollars 61
 Waiver 62

PART IV

Licences for Agents

Licensing of agent 63
 Application form 64
 Licence required 65
 No compensation except to licensee 66
 Premium in policy 67
 Personal liability of agent or broker 68
 Misrepresentation of policy prohibited 69
 Inducing policyholder to lapse or surrender 70
 Disclosure statement 71
 Suspension or cancellation of licence 72
 Hearing prior to suspension or cancellation 73
 Person ceasing or starting to act for insurer 74
 Evidence of licensee status 75
 Investigation 76
 Appeal 77
 Insurance council 78
 Regulations 79
 Schedule to Part IV

PART V

Licences for Adjusters

Licensing of adjuster 80
 Expiration of licence 81
 Regulations respecting adjusters 82
 Advisory board 83
 Licence required 84
 Suspension or cancellation of licence 85
 Hearing prior to suspension or cancellation 86
 Adjuster to notify Superintendent 87
 Evidence of adjuster status 88
 Investigation 89
 Appeal 90

PART VI

Accident and Sickness Insurance

Interpretation of Part 91
 Application of Part 92
 Application to group insurance contract 93
 Policy to be issued 94
 Particulars in policy 95
 Condition respecting confinement 96
 Particulars in policy of group insurance 97
 Continuing liability after termination 98
 Particulars to person covered 99
 Disclosure of exception or reduction 100
 Statutory conditions 101
 Omission of statutory condition 102
 Notice of statutory conditions 103
 Effect of delivery of policy or renewal 104
 Unpaid premium 105
 Persons with insurable interest 106
 No insurable interest 107

Policies on Lives of Minors

Capacity of minor 108

Misrepresentation and Non-disclosure

Duty to disclose 109
 Contract not voidable 110
 Reinstatement 111
 Prior existence of disease or condition 112
 Misstatement of age 113

Beneficiaries

Designation of representative or beneficiary 114
 Designation and payment 115
 Trustee for beneficiary 116
 Payment and assignment 117
 Entitlement of beneficiary 118
 Enforcement of contract by group person insured 119
 Simultaneous deaths 120
 Payment into court 121
 Payment into court for minor 122
 Payment for beneficiary under disability 123
 Payment to authorized person 124
 Place of payment 125
 Claimant may sue in Province 126
 Information affecting insurance money 127
 Undue prominence to policy term 128
 Imperfect compliance with statutory condition 129
 Persons not agent of insured 130
 Schedule to Part VI

PART VII

Automobile Insurance

Interpretation of Part 131

Application of Part

Application of Part 132
 Participation in plan 133
 Representation of insurer and keeping records in Province 134

Levy Pursuant to Health Services and Insurance Act and this Act	
Levy	135
Levy on each insured vehicle	136
Approval of Forms	
Approval by Superintendent	137
Application and Policy	
Persons forbidden to act as agent.....	138
Requirements respecting application.....	139
Misrepresentation or contravention and defence.....	140
Mandatory conditions	141
Excluded driver.....	142
Effect of income-continuation benefit plan	143
Limitation on liability	144
Excluded damages	145
Discount rate.....	146
Excess insurance.....	147
Accident claims	148
Motor Vehicle Liability Policies	
Owner's policy.....	149
Non-owner's policy	150
Owner does not include lienholder	151
Territorial limit.....	152
Rights of unnamed insured	153
Obligation of insurer.....	154
Contamination.....	155
Insurer not liable	156
Exclusions respecting business.....	157
Exclusions respecting equipment	158
Exclusions respecting use	159
Minimum liability under policy.....	160
Liability in other jurisdiction	161
Prohibited defences.....	162
Separate excess contract	163
Reimbursement agreement	164
Liability of insurer under nuclear energy contract.....	165
Effect of payments under policy	166
Application for direction.....	167
Action by claimant against insurer	168
Recovery by convicted insured restricted.....	169
Notice of action and disclosure of particulars	170
Physical Damage Cover	
Exclusions and limitations.....	171
Partial payment clause	172
Adjustment of claim	173
Direct Compensation for Property Damage	
Recovery for property damage	174
Regulations	175
Limited Accident Insurances	
Required contents of certain contracts.....	176
Application of Sections 178 to 197	177
Payment by Facility Association	178
Application for payment where judgment	179
Duty to make payment.....	180

Objections to application for payment 181

Application to judge of Supreme Court 182

Powers of Court on application 183

Restriction on powers of Court 184

Prerequisite to payment by Association 185

Application for order permitting action 186

Powers of Court on application 187

Rights of Facility Association 188

Application of Sections 186 and 187 189

Application to add party unknown as defendant 190

Action for declaratory judgment 191

Restriction or power to grant judgment 192

Deduction from amount of damages 193

Costs payable 194

Applicable practice and procedure 195

Prohibition against application by Governments 196

Deeming for purposes of Sections 178 to 196 197

Regulations 198

Medical and other expense coverage 199

Demand for insurance particulars 200

Right of unnamed insured 201

Liability of insurer in first instance 202

Payment into court 203

Limitation period 204

Disclosure of insurance particulars 205

Terms of insurance permitted 206

Other Insurance

First loss and excess insurance 207

Interpretation 208

Right of action for damages caused by negligence 209

Onus of proof 210

Recovery of loss or damage 211

Owner jointly responsible for damage 212

Owner not responsible for damage caused by stolen car 213

Subrogation

Subrogation 214

Policies Other than Motor Vehicle Liability Policies

Partial payment of loss 215

Adjustment of claim with insured 216

Rates and Rating Bureaux

Organization of rating bureau 217

Return respecting rates 218

Facility Association 219

Decrease in rates 220

Risk-classification system 221

Application of Sections 223 to 225 222

Application for approval of risk-classification system or rates 223

Approval of risk-classification system or rates 224

Expedited approval 225

Refusal to approve 226

Appeal 227

Costs 228

Statistical return 229

Adjustment of rates by Board 230

Access to records 231

Regulations 232

Insurer not to refuse to insure, renew or continue or to terminate insurance 233

Withdrawal of Insurance Companies

Restriction on withdrawal.....	234
Review of this Part.....	235

PART VIII

Fire Insurance

Interpretation of Part.....	236
Application of Part.....	237
Other perils	238
Extent of coverage	239
Contents of policy.....	240
Variance between application and policy	241
Renewal of contract	242
Statutory conditions	243
Notice of cancellation or alteration.....	244
Contribution among insurers	245
Notice of limit of liability	246
Relief granted by court	247
Subrogation.....	248
Schedule to Part VIII	

PART IX

Life Insurance

Interpretation of Part.....	249
-----------------------------	-----

Application of Part

Application of Part.....	250
Application to group insurance.....	251

Issuance of Policy and Contents Thereof

Contract of insurance.....	252
Contents of policy.....	253
Contents of group policy	254
Contents of group certificate	255

Conditions Governing Formation of Contract

Insurable interest.....	256
"insurable interest" defined	257
Contract taking effect.....	258
Deemed results respecting payments.....	259
Payment of premium.....	260
Duty to disclose	261
Contract not voidable.....	262
Non-disclosure by insurer	263
Misstatement of age and insurable age.....	264
Misstatement in group insurance.....	265
Suicide	266
Reinstatement	267

Designation of Beneficiaries

Designation of beneficiary.....	268
Irrevocable designation.....	269
Designation in will.....	270
Trustee for beneficiary.....	271
Beneficiary predeceasing life insured.....	272
Right to enforce contract	273
Exemption from execution and seizure	274

Deals with Contract During Lifetime of Insured

Insured dealing with contract	275
Entitlement to dividend and bonus	276
Transfer of interest of insured	277
Assignment of contract	278
Enforcement by group-life insured	279
Limit on payments into life insurance contracts	280

Minors

Capacity of minor	281
Capacity of minor beneficiary	282

Proceedings Under Contract

Matters to be proved	283
Payment	284
Action in Province	285
Limitation of action	286
Instrument or order respecting payment	287
Sufficiency of proof	288
Presumption of death	289
Court may make order	290
Application stays proceeding	291
Appeal	292
Powers of Court	293
Payment into court	294
Simultaneous deaths	295
Insurance money payable in instalments	296
Insurer holding insurance money	297
Application for payment into court	298
Costs	299
Payment into court for minor	300
Beneficiary under disability	301

Miscellaneous Provisions

Presumption against agency	302
Insurer giving misinformation	303
Prohibition on trading of life insurance or benefits	304

PART X

Marine Insurance

Interpretation	305
Contract of marine insurance	306
Mixed land and sea risks	307
Marine adventure insurance permitted	308

Insurable Interest

Gaming or wagering contract	309
Insurable interest	310
When interest must attach	311
Defeasible or contingent interest	312
Partial interest	313
Reinsurance	314
Bottomry or respondentia	315
Wages	316
Advance freight	317
Charges of insurance	318
Mortgage	319
Assignment of interest	320

Insurable Value	
Measure of insurable value	321
Disclosure and Representations	
Good faith	322
Disclosure by insured	323
Disclosure by agent	324
Untrue representation by agent	325
When contract concluded	326
The Policy	
Contract of marine insurance	327
Contents of policy	328
Signature of insurer	329
“voyage” and “time” policies	330
Subject-matter	331
Types of policy and valued policy	332
Unvalued policy	333
Floating policy	334
Form of policy	335
Premium arranged	336
Double Insurance	
Double insurance	337
Warranties, etc.	
Warranty	338
Non-compliance	339
Express warranty	340
“neutral” property or ship	341
Nationality of ship	342
Warranty of “well” or “in good safety”	343
Warranty respecting seaworthiness, ordinary perils or preparation	344
Seaworthiness of movables and fitness to carry	345
Warranty respecting legality	346
The Voyage	
Commencement of voyage	347
Change of port of departure	348
Change of destination	349
Change of voyage	350
Effect of deviation from voyage	351
Several ports of discharge	352
Delay in voyage	353
Deviation or delay excused	354
Assignment of Policy	
Assignment	355
Late assignment	356
The Premium	
Premium	357
Broker	358
Effect of receipt on policy	359
Proximate cause of loss	360
Total or partial loss	361
Actual total loss	362
Missing ship	363
Effect of transshipment	364

Constructive total loss	365
Effect of constructive total loss	366
Abandonment	367
Effect of abandonment	368
Partial Losses (Including Salvage and General Average and Particular Charges)	
Particular average loss	369
Salvage charges	370
General average loss	371
Measure of Indemnity	
Measure of indemnity	372
Total loss	373
Partial loss respecting ship	374
Partial loss of freight	375
Partial loss of movables	376
Apportionment of valuation	377
Indemnity payable	378
Indemnity to third party	379
Measure of indemnity for other loss	380
Particular average warranty	381
Successive losses	382
Suing and labouring clause	383
Rights of Insurer on Payment	
Subrogation where loss	384
Contribution	385
Effect of underinsurance	386
Return of Premium	
Right to return of premium	387
Return by agreement	388
Total failure of consideration	389
Mutual Insurance	
Mutual insurance	390
Supplemental	
Ratification of contract	391
Variation by agreement or usage	392
Meaning of reasonable	393
Common law	394
Schedule to Part X	
PART XI	
Penalties	
General penalty	395
Limitation	396
PART XII	
Agreement	
Agreement with Quebec	397

PART XIII

Self-Insurance Plans

Interpretation of Part..... 398
 Contracts of indemnity or inter-insurance 399
 Not deemed to be insurer..... 400
 Execution of contracts 401
 Declaration..... 402
 Licence..... 403
 Licence may not be issued..... 404
 Deemed service..... 405
 Statements to be filed with Superintendent 406
 Reserve fund and guarantee fund 407
 Investment of surplus funds..... 408
 Liability on behalf of subscribers 409
 Attorney not to act until licence issued..... 410
 Licence suspended or revoked..... 411
 Insurance against fire..... 412

Short title

1 This Act may be cited as the *Insurance Act*. R.S., c. 231, s. 1.

INTERPRETATION

Interpretation

2 In this Act,

“accident insurance” means insurance by which the insurer undertakes, otherwise than incidentally to some other class of insurance defined by or under this Act, to pay insurance money in the event of accident to the person or persons insured, but does not include insurance by which the insurer undertakes to pay insurance money both in the event of death by accident and in the event of death from any other cause;

“accidental death insurance” means insurance undertaken by an insurer as part of a contract of life insurance whereby the insurer undertakes to pay an additional amount of insurance money in the event of the death by accident of the person whose life is insured;

“adjuster” means a person who

(a) on behalf of an insurer or an insured, for compensation, directly or indirectly solicits the right to negotiate the settlement of or investigate a loss or claim under a contract or a fidelity, surety or guarantee bond issued by an insurer, or investigates, adjusts or settles any such loss or claim; or

(b) purports to be an adjuster, investigator, consultant or adviser with respect to the settlement of such losses or claims;

but does not include

(c) a barrister or solicitor acting in the usual course of the barrister’s or solicitor’s profession;

(d) a trustee or agent of the property insured;

(e) a licensed agent or a salaried employee of an insurer licensed pursuant to Section 5 to carry on the business of insurance in the Province while acting on behalf of such insurer in the adjustment of losses;

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

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

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

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

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

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

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

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

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

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

“fraternal society” means a society, order or association incorporated for the purpose of making with its members only and not for profit, contracts of life, accident or sickness insurance in accordance with its constitution, by-laws and rules and this Act;

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

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

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

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

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

- (a) on death;
- (b) on the happening of an event or contingency dependent on human life;
- (c) at a fixed or determinable future time; or
- (d) for a term dependent on human life,

and, without restricting the generality of the foregoing, includes

- (e) accidental death insurance but not accident insurance;
- (f) disability insurance; and
- (g) an undertaking entered into by an insurer to provide an annuity or what would be an annuity except that the periodic payments may be unequal in amount and such an undertaking is deemed always to have been life insurance;

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

“person” includes a firm, partnership or corporation;

“policy” means the instrument evidencing a contract;

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

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

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

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

PART I

GENERAL

Superintendent and other personnel

3 (1) The Governor in Council may appoint

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

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

Duty and powers of Superintendent and regulations

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

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

(3) The Governor in Council may make regulations

- (a) respecting the qualifications of insurance agents;
- (b) respecting the form and content of courses of study for licences of insurance agents;
- (c) respecting the time and manner of conducting examinations of insurance agents;
- (d) prescribing books, accounts and records to be kept and maintained by insurance agents;
- (e) respecting fees for licences and renewals of licences of any class or kind issued under this Act;
- (f) extending the provisions of this Act or any of them to a system or class of insurance not specifically mentioned in this Act;
- (g) respecting group insurance contracts or schemes, or any class thereof, and, without restricting the generality of the foregoing, prescribing and regulating their terms and conditions, qualifications for membership in groups and respecting the marketing of group insurance contracts or schemes;
- (h) respecting the advertising of insurance contracts or any class thereof and, without restricting the generality of the foregoing, prescribing and regulating the form and content of the advertisements and requiring advertisements to be filed and approved by the Superintendent;
- (i) designating as compensation associations bodies corporate or unincorporated associations, or both, whose purposes are to provide compensation to policyholders of and eligible claimants on insolvent insurers;
- (j) prescribing classes of insurance for the purpose of Section 9 and designating a compensation association for one or more of such classes of insurance;
- (k) prescribing requirements for the purpose of clause 13(3)(c);
- (l) designating insurers as being adequately covered by a plan of compensation other than that provided by reason of membership in a compensation association;
- (m) defining insolvent insurers for the purpose of this Act;
- (n) authorizing persons or classes of persons for the purpose set out in subsection 304(2);

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

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

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

(5) 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. 231, s. 5; 2003 (2nd Sess.), c. 1, s. 4; 2010, c. 18, s. 1; 2018, c. 12, s. 1; 2020, c. 12, s. 1.

Licence

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

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

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

(4) The Superintendent may suspend or revoke a licence of an insurer issued pursuant to this Section for misconduct by the insurer or a violation by the insurer of any provision of this Act, the regulations or any federal or provincial enactment applicable to the insurer. R.S., c. 231, s. 6.

Entry and inspection of documents

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

Regulations

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

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

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

Agreements

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

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

Compensation association

9 (1) Where a compensation association has been designated by the regulations made pursuant to subsection 4(3) for any of the classes of insurance prescribed by those regulations then, subject to subsection (2), every insurer, while licensed to carry on that class of insurance and, except for the classes of life and accident and sickness insurance, for 183 days after ceasing to be so licensed, is a member of that compensation association.

(2) Subsection (1) does not apply to an insurer

(a) that is designated by a regulation made pursuant to clause 4(3)(1);

(b) whose business is limited to that of reinsurance; or

(c) that is exempted from membership by an agreement made pursuant to Section 8.

(3) Every member of a compensation association is bound by the bylaws and memorandum of operation of the compensation association.

(4) A member of a compensation association shall pay to the compensation association all assessments and levies made against the member by the compensation association.

(5) Where a member fails to pay an assessment or levy within 30 days of the mailing of the notice of assessment or levy to the member,

(a) the compensation association may claim the amount of the assessment or levy, with interest, as a debt due from the member; and

(b) the Minister, on the recommendation of the Superintendent, may cancel the licence of the member to carry on the business of insurance.

(6) A debt due pursuant to subsection (5) does not cease to be due on the termination of the member's membership. R.S., c. 231, s. 10; 1998, c. 8, s. 44; 2003 (2nd Sess.), c. 1, s. 6.

Representing prohibited insurer

10 No person shall do or carry on any part of the business of insurance in the Province on behalf of or as agent for an insurer who is prohibited by Section 5 from carrying on the business of insurance in the Province. R.S., c. 231, s. 11; 1998, c. 8, s. 45.

Signature and commission of agents

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

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

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

Violation of law not necessarily fatal

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

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

Limitation on exclusion

13 (1) Where a contract contains a term or condition excluding coverage for loss or damage to property caused by a criminal or intentional act or omission of an insured or any other person, the exclusion applies only to the claim of a person

- (a) whose act or omission caused the loss or damage;
- (b) who abetted or colluded in the act or omission;
- (c) who
 - (i) consented to the act or omission, and
 - (ii) knew or ought to have known that the act or omission would cause the loss or damage; or
- (d) who is not a natural person.

(2) Nothing in subsection (1) allows a person whose property is insured under the contract to recover more than the person's proportionate interest in the lost or damaged property.

- (3) A person whose coverage would be excluded but for subsection (1) shall
- (a) co-operate with the insurer in respect of the investigation of the loss, including submitting to an examination under oath if requested by the insurer;
 - (b) in addition to producing any documents required by the contract, produce for examination, at a reasonable place and time specified by the insurer, all documents in the person's possession or control that relate to the loss; and
 - (c) comply with any other requirement prescribed by the regulations. 2018, c. 12, s. 2.

Statement of agent or broker

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

Filing and use of form of policy

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

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

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

Substitution of successor

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

PART II

NOVA SCOTIA INSURANCE REVIEW BOARD

Interpretation of Part

17 In this Part,

“Chair” means the Chair of the Board;

“Executive Officer” means the Executive Officer of the Board;

“member” means a member of the Board;

“Vice-chair” means the Vice-chair of the Board. 2003 (2nd Sess.), c. 1, s. 7.

Nova Scotia Insurance Review Board

18 (1) A board to be known as the Nova Scotia Insurance Review Board is established.

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

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

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

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

- (a) automobile insurance rates and factors affecting them;
- (b) casualty insurance rates and availability and factors affecting them, including accident insurance, fire insurance, homeowners' and tenants' insurance and like coverages;
- (c) liability insurance rates and availability factors affecting them; and
- (d) any matter designated by the Governor in Council respecting any class of insurance and the factors affecting its cost or availability. 2003 (2nd Sess.), c. 1, s. 7.

Membership

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

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

(3) Each member of the Board must swear to the faithful performance of that member's duties before entering office.

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

(5) Where a member of the Board resigns or retires from the Board, or where the member's term of office expires, the member shall, during such period of time as the Governor in Council determines, in respect of any application,

appeal, proceeding, matter or thing heard before the member or commenced by the member as a member, have and exercise the jurisdiction of a member, including the power to complete any unfinished matter and give a decision therein as if the member had not so resigned or retired or the member's term of office had not expired.

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

Chair and Vice-chair

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

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

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

Remuneration of members

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

Conflict of interest

22 (1) No member shall be directly or indirectly employed by or interested in an insurance company or interested in a share, stock, bond, mortgage, security or contract of an insurance company and, where a member voluntarily becomes so interested, the member's office becomes vacant or, where the member becomes so interested otherwise than voluntarily, the member shall, within a reasonable time, dispose of the interest.

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

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

Personnel

23 (1) An Executive Officer and the other officers and employees required for the administration of the Board must be appointed in accordance with the *Civil Service Act*.

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

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

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

Expenses

24 (1) The expenses of the Board shall be paid out of the levies made by the Board and out of money appropriated by the Legislature for that purpose.

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

Rules of practice and procedure

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

Powers and duties of Chair

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

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

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

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

Quorum

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

Panels

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

Vacancy does not impair

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

Powers, privileges and immunities

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

Oaths, certificates and subpoenas

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

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

Evidence

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

Adjournment of hearing

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

Representation by counsel

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

Exclusive jurisdiction

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

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

Determination of question of fact

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

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

Orders

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

Form of order

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

Binding determination

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

Final decision

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

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

Costs

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

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

Appeal

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

(2) A notice of appeal must be filed within 30 days of the issuance of the order and must contain the names of the parties and the date of the order appealed from.

(3) A copy of the notice of appeal must be served upon the other parties within 10 days of filing the notice of appeal with the Nova Scotia Court of Appeal.

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

Regulations

43 (1) The Governor in Council may make regulations

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

- (b) respecting the remuneration and expenses of the Chair, Vice-chair and members of the Board;
- (c) respecting the jurisdiction of the Board, and conferring additional powers, functions, duties and responsibilities upon it;
- (d) respecting the location of hearings of the Board;
- (e) requiring public notice of hearings of the Board, with power to prescribe the manner in which and by whom the notice must be given;
- (f) prescribing the necessary parties to applications, appeals or other matters or proceedings before the Board;
- (g) permitting persons who are not parties to an application, appeal or other matter or proceeding before the Board to participate in an application, appeal or other matter or proceeding, with power to prescribe the extent of the participation;
- (h) respecting the keeping of a record of matters or proceedings before the Board;
- (i) respecting the release of information by the Board;
- (j) respecting the manner in which the expenses of the Board are to be recovered from insurers;
- (k) defining any word or expression used but not defined in this Part;
- (l) respecting any matter the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Part.

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

PART III

INSURANCE CONTRACTS IN THE PROVINCE

Application of Part

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

- (a) a contract of accident and sickness insurance to which Part VI applies;
- (b) a contract of life insurance to which Part IX applies; and
- (c) a contract of marine insurance to which Part X applies. R.S., c. 231, s. 17.

Delivery and contents of policy

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

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

Copy of application

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

Effect of delivery of policy

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

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

Default in paying and payment of premium

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

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

Assignment of refund of premium

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

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

Proof of loss form

50 (1) An insurer, immediately upon receipt of a request, and in any event not later than 60 days after receipt of notice of loss, shall furnish to the person insured or person to whom the insurance money is payable forms upon which to make the proof of loss required under the contract.

(2) An insurer who neglects or refuses to comply with subsection (1) is guilty of an offence, and, in addition, Section 51 is not available to the insurer as a defence to an action brought, after such neglect or refusal, for the recovery of money payable under the contract of insurance.

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

Commencement of proceeding

51 No action may be brought for the recovery of money payable under a contract until the expiration of 60 days after proof, in accordance with the provisions of the contract,

(a) of the loss; or

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

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

Payment to agent or broker

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

Agent holds money in trust

53 (1) An agent who acts in negotiating, renewing or continuing a contract of insurance other than life insurance, with an authorized or a licensed insurer, and who receives any money or substitute for money as a payment on account of a premium for such a contract from the insured, is deemed to hold such payment in trust for the insurer, and, where the agent fails to pay the payment over to the insurer within 15 days after written demand made upon the agent therefor, less the agent's commission and any deductions to which, by the written consent of the company, the agent is entitled, such failure is prima facie evidence that the agent has used or applied the payment for a purpose other than paying it over to the insurer.

(2) An agent who acts in negotiating, renewing or continuing a contract of insurance with an authorized or a licensed insurer, and who receives any

money or substitute for money for payment to a person in respect of the contract of insurance, is deemed to hold such money in trust for the person entitled thereto, and, where the agent fails to pay the money over to such person within 15 days after written demand made upon the agent therefor, less the agent's commission and any deductions to which the agent is entitled, such failure is prima facie evidence that the agent has used or applied the money for a purpose other than paying it over to the person entitled.

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

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

Payment into court

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

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

the insurer may, at any time after 30 days from the date of the happening of the event upon which the insurance money becomes payable, apply to the court *ex parte* for an order for payment of the money into court, and the court may upon such notice, if any, as it thinks necessary make an order accordingly.

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

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

Action against insurer

55 (1) Where a person incurs a liability for injury or damage to the person or property of another, and is insured against such liability, and fails to satisfy a judgment awarding damages against the person in respect of the person's liability, and an execution against the person in respect thereof is returned unsatisfied, the person entitled to the damages may recover by action against the insurer the amount of the judgment up to the face value of the policy, but subject to the same equities as the insurer would have if the judgment had been satisfied.

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

Notice to insured or insurer

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

Imperfect compliance

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

Fire insurance as security

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

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

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

Determination by appraisers or umpire

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

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

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

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

(5) Where

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

(b) the appraisers fail to agree upon an umpire within 15 days after their appointment; or

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

a judge of the Supreme Court of Nova Scotia may appoint an appraiser or umpire, as the case may be, upon the application of the insured or of the insurer. R.S., c. 231, s. 32.

Court may relieve against forfeiture

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

Canadian dollars

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

Waiver

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

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

PART IV

LICENCES FOR AGENTS

Licensing of agent

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

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

(3) The licence is subject to any limitations and conditions the Superintendent prescribes.

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

- (a) a life insurance licence authorizing the licensee to act as an agent for life and accident and sickness insurance or a life insurance licence restricting the licensee to act as an accident and sickness insurance agent only; and
 - (b) a general insurance licence authorizing the licensee to act as an agent for any class or classes of insurance other than those classes authorized under a life insurance licence.
- (5) A licence for any class of insurance other than life insurance entitles the agent to act as a broker.
- (6) Every licence expires at the end of three years after it has been issued or at such time as the Superintendent may determine, but may be renewed on application to the Superintendent and payment of the fee prescribed in the Schedule to this Part, unless cancelled or suspended by the Superintendent.
- (7) Notwithstanding subsection (6), the Superintendent may determine for a particular licence or class of licence an expiry date that is less than three years from the date on which it was issued or renewed.
- (8) The Superintendent may grant a licence if
- (a) in the Superintendent's opinion, the applicant is suitable to be licensed and the proposed licensing is not for any reason objectionable;
 - (b) the applicant passes a qualification examination if one is prescribed by the Superintendent or passes any supplemental examination if the applicant fails the qualification examination and pays any fees associated with the writing of examinations as may be prescribed by the regulations;
 - (c) the application indicates the name of the insurer who sponsors the applicant;
 - (d) the Superintendent is satisfied that the applicant intends to publicly purport to be and carry on business as a bona fide agent; and
 - (e) the Superintendent is satisfied that the applicant is not in a position to use coercion or undue influence to secure insurance business.
- (9) In determining the granting or refusal of an application for a licence or renewal of a licence, or the suspension or cancellation of a licence or the reinstatement of any suspended or cancelled licence, the Superintendent may, in any case where the Superintendent considers it proper, nominate an advisory board consisting of three persons, one of whom is the Superintendent or another person appointed by the Superintendent, one of whom is a representative of insurers and one of whom is a representative of agents licensed pursuant to this Act, and may refer a matter to the board for hearing and report, and the Superintendent shall take such report into consideration when making a decision pursuant to this Section. R.S., c. 231, s. 36; 2015, c. 6, s. 28.

Application form

64 An application for a licence must be in the form prescribed by the Superintendent and must be made to the Superintendent. R.S., c. 231, s. 37.

Licence required

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

- (2)** Subject to this Section, no person shall
- (a) either on the person’s own account; or
 - (b) as a member or representative of
 - (i) a partnership or a corporation, or
 - (ii) an insurer licensed pursuant to Section 5 to carry on the business of insurance in the Province,

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

(3) A member or representative of an insurer licensed pursuant to Section 5 to carry on the business of insurance in the Province, who does not receive a commission and who acts only in the name of and on behalf of the insurer may, without a licence, act as an agent for the insurer.

(4) A member of a fraternal society may, without a licence, solicit insurance contracts on behalf of the society unless the member devotes or intends to devote more than one half the member’s time to soliciting such contracts or has in the previous licence year solicited and procured life insurance contracts on behalf of the society in an amount in excess of \$20,000.

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

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

- (a) within 10 business days of receipt, return the licence to the Superintendent; and
- (b) give the Superintendent the reason for the withdrawal of sponsorship.

(7) Where an insurer withdraws sponsorship, the licence is cancelled.

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

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

No compensation except to licensee

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

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

Premium in policy

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

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

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

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

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

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

Personal liability of agent or broker

68 An agent or broker is personally liable to the insured on all contracts unlawfully made by or through the agent or broker directly or indirectly with any insurer not licensed pursuant to Section 5 to carry on the business of insurance in the Province in the same manner as if such agent or broker were the insurer. R.S., c. 231, s. 41.

Misrepresentation of policy prohibited

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

Inducing policyholder to lapse or surrender

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

Disclosure statement

71 Every agent, upon taking an application where replacement of an existing contract of life insurance by another contract of life insurance is intended,

shall give the applicant a disclosure statement as prescribed by the regulations. R.S., c. 231, s. 44.

Suspension or cancellation of licence

72 (1) Subject to Section 73, a licence may be suspended or cancelled by the Superintendent if, after due investigation, the Superintendent determines that the holder of a licence has

- (a) made a material misstatement in the application for the licence;
- (b) violated this Act or the regulations; or
- (c) demonstrated the holder's incompetency or untrustworthiness to act as an insurance agent by anything done or omitted in connection with the business for which the licence was granted.

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

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

Hearing prior to suspension or cancellation

73 (1) Before suspending or cancelling an agent's licence pursuant to Section 72, the Superintendent shall fix a time and place for a hearing to review the evidence and shall give the agent 15 days notice of such hearing.

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

Person ceasing or starting to act for insurer

74 (1) Where an agent or broker ceases to act for an insurer, the insurer shall, within 10 business days, notify the Superintendent in writing of the fact along with the reason for the termination and, until such notification is received by the Superintendent, the agent or broker is deemed to be authorized to act in the Province as agent or broker for the insurer.

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

Evidence of licensee status

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

- (a) a person mentioned therein was or was not licensed under this Part;
- (b) a person mentioned therein was originally issued a licence; or

(c) the licence of an agent mentioned therein was renewed, suspended, revived or revoked,

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

Investigation

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

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

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

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

Appeal

77 (1) A person who is dissatisfied with a decision of the Superintendent pursuant to this Part may, within 30 days from the date of the decision, appeal to a judge of the Supreme Court of Nova Scotia who may, upon hearing the appeal that must be heard in accordance with the *Summary Proceedings Act*, by order do any one or more of the following things:

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

(2) The appeal must be by notice of appeal and a copy thereof must be served upon the Superintendent not less than 10 days before the day on which the motion is returnable.

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

(4) An appeal lies to the Nova Scotia Court of Appeal from a decision of the Supreme Court of Nova Scotia upon any question of law but such appeal may only be taken by leave of a judge of the Court of Appeal given upon an application presented to the judge within 30 days after the rendering of the decision and upon such terms as the judge may determine, and notice of such an application must be given to the Superintendent at least two clear days before the presentation of such application.

(5) Where leave to appeal has been granted, the appeal must be brought by notice served on the Superintendent within 10 days after the leave to appeal has been granted and the notice must contain the names of the parties and the date of the decision appealed from and such other particulars as the judge granting leave to appeal may require. R.S., c. 231, s. 50.

Insurance council

78 (1) In this Section, “council” means a council established pursuant to subsection (2).

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

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

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

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

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

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

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

- (e) make recommendations to government;
 - (f) fix and collect licence, registration or other fees and special fees from applicants, registrants and licensees in the insurance industry that are necessary to allow the council to finance the exercise of its assigned powers;
 - (g) initiate and engage in programs of consumer protection;
 - (h) subdelegate its powers to sub-councils or committees;
 - (i) make bylaws necessary for its efficient functioning.
- (5) A council shall file with the Superintendent every bylaw, rule and regulation and amendment thereto made by the council within 30 days of making it.
- (6) The Superintendent shall, within 30 days of receiving a bylaw, rule, regulation or amendment pursuant to subsection (5),
- (a) advise the council that the Superintendent approves the bylaw, rule, regulation or amendment, as the case may be, and fix a date on which the bylaw, rule, regulation or amendment comes into force; or
 - (b) where the Superintendent is of the opinion that the bylaw, rule, regulation or amendment, as the case may be, is unacceptable or prejudicial to the public interest, so advise the council.
- (7) No bylaw, rule or regulation or amendment thereto made by a council comes into force until the Superintendent fixes a date pursuant to clause (6)(a).
- (8) Every decision of a council is subject to review by the Superintendent on the Superintendent's own initiative or at the request of any interested person.
- (9) A decision of the Superintendent, as a result of a review pursuant to subsection (8), may be appealed to the Supreme Court of Nova Scotia. R.S., c. 231, s. 51.

Regulations

- 79 (1)** With the approval of the Governor in Council, the Superintendent may make regulations
- (a) classifying applications for licences and restricting or prohibiting the licensing of any class of applicant;
 - (b) providing for the issuing and renewal of licences and the fees payable on the application for or renewal of licences;
 - (c) providing for the holding of examinations and the fees payable for examinations;
 - (d) prescribing the conditions upon which a licence may be refused, revoked, suspended or not renewed;

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

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

SCHEDULE TO PART IV

FEES FOR LICENCES FOR AGENTS

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

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

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

2015, c. 6, s. 29.

PART V

LICENCES FOR ADJUSTERS

Licensing of adjuster

80 (1) Subject to Section 83, the Superintendent may issue to any person a licence authorizing the person to act as an adjuster upon

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

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

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

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

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

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

Expiration of licence

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

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

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

Regulations respecting adjusters

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

- (a) respecting the qualifications and classification of adjusters;
- (b) respecting probationary adjusters;
- (c) providing for licences for different classes of adjusters;
- (d) prescribing fees payable on the application for or renewal of licences for adjusters;
- (e) prescribing the conditions upon which a licence may be refused, revoked, suspended or not renewed;
- (f) relating to the form and content of courses of study for different classes of adjusters and licences;

- (g) respecting the time and manner of conducting examinations of adjusters and prescribing the fees for such examinations;
- (h) prescribing books, accounts and records to be kept and maintained by adjusters;
- (i) fixing or limiting the fees or charges that may be made by adjusters;
- (j) requiring adjusters to supply information and make returns to the Superintendent and prescribing the contents of those returns;
- (k) exempting any person or class of persons from any of the provisions of this Part;
- (l) defining any word or expression used but not defined in this Part;
- (m) generally for the better carrying out of this Part and the more efficient administration of it.

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

Advisory board

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

Licence required

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

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

- (a) solicit the right to negotiate or negotiate or attempt to negotiate, for compensation, the settlement of a claim for loss or damage arising out of a motor vehicle accident resulting from bodily injury to or death of any person or damage to property on behalf of a claimant; or
- (b) purport to be an adjuster, investigator, consultant or otherwise as an adviser, on behalf of any person having a claim

against an insured for which indemnity is provided by a motor vehicle liability policy.

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

Suspension or cancellation of licence

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

- (a) has made a material misstatement in the application for the licence;
- (b) has violated this Act or the regulations; or
- (c) has demonstrated the holder's incompetency or untrustworthiness to act as an adjuster or probationary adjuster, by anything done or omitted in connection with the business for which the licence was granted.

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

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

Hearing prior to suspension or cancellation

86 (1) Before cancelling or suspending an adjuster's or probationary adjuster's licence pursuant to Section 85, the Superintendent shall fix a time and place for a hearing to review the evidence and shall give the adjuster or probationary adjuster 15 days notice of the hearing.

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

Adjuster to notify Superintendent

87 Where a licensed insurance adjuster or a person who holds a licence on a probationary basis ceases to act as adjuster either personally or as a member or representative of a partnership or corporation, the licensed insurance adjuster or the person holding a licence on a probationary basis shall, within 10 business days, notify the Superintendent in writing of such fact and the reason for the termination. R.S., c. 231, s. 60.

Evidence of adjuster status

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

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

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

Investigation

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

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

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

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

Appeal

90 (1) A person who is dissatisfied with a decision of the Superintendent pursuant to this Part may, within 30 days from the date of the decision, appeal to a judge of the Supreme Court of Nova Scotia who may, upon hearing the appeal, which must be heard in accordance with the *Summary Proceedings Act*, by order do any one or more of the following things:

- (a) dismiss the appeal;
- (b) allow the appeal;
- (c) allow the appeal subject to terms and conditions;
- (d) vary the decision appealed against;
- (e) refer the matter back to the Superintendent for further consideration and decision;

- (f) award costs of the appeal;
- (g) make such other order as to the judge seems just.

(2) The appeal must be by notice of appeal and a copy thereof must be served upon the Superintendent not less than 10 days before the day on which the motion is returnable.

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

(4) An appeal lies to the Nova Scotia Court of Appeal from a decision of the Supreme Court of Nova Scotia upon any question of law but such appeal may only be taken by leave of a judge of the Court of Appeal given upon an application presented to the judge within 30 days after the rendering of the decision and upon such terms as the judge may determine, and notice of such application to the Superintendent at least two clear days before the presentation of such application.

(5) Where leave to appeal has been granted, the appeal must be brought by notice served on the Superintendent within 10 days after the leave to appeal has been granted and the notice must contain the names of the parties and the date of the decision appealed from and such other particulars as the judge granting leave to appeal may require. R.S., c. 231, s. 63.

PART VI

ACCIDENT AND SICKNESS INSURANCE

Interpretation of Part

91 In this Part,

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

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

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

“contract” means a contract of insurance;

“Court” means the Supreme Court of Nova Scotia or a judge thereof;

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

“declaration” means an instrument signed by the insured

- (a) with respect to which an endorsement is made on the policy;
- (b) that identifies the contract; or
- (c) that describes the insurance or insurance fund or a part thereof,

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

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

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

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

“instrument” includes a will;

“insurance” means accident insurance, sickness insurance, or accident and sickness insurance;

“insured” means

- (a) in the case of group insurance, in the provisions of this Part relating to the designation of beneficiaries or of personal representatives as recipients of insurance money and their rights and status, the group person insured; and
- (b) in all other cases, the person who makes a contract with an insurer;

“person insured” means a person in respect of an accident to whom, or in respect of whose sickness, insurance money is payable under a contract, but does not include a group person insured;

“will” includes a codicil. R.S., c. 231, s. 64.

Application of Part

92 (1) Notwithstanding any agreement, condition or stipulation to the contrary, this Part applies to a contract made in the Province on and after December 1, 1970, and this Section and Sections 91, 93, 94, 103, 106 to 108, 112 and 114 to 130 apply also to a contract made in the Province before that day.

(2) Sections 53, 54, 55, 56, 58, 65 and 68 of Part V of Chapter 148 of the Revised Statutes, 1967, in force immediately prior to December 1, 1970, apply to a contract made in the Province before that day.

- (3) This Part does not apply to
- (a) accidental death insurance;
 - (b) creditor's group insurance;
 - (c) disability insurance; or
 - (d) insurance provided under Section 176 or 199. R.S., c. 231, s. 65.

Application to group insurance contract

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

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

Policy to be issued

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

Particulars in policy

- 95** (1) This Section does not apply to
- (a) a contract of group insurance; or
 - (b) a contract made by a fraternal society.

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

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

Condition respecting confinement

96 (1) Where a contract of accident insurance or sickness insurance issued on or after July 1, 1976, includes a provision that a benefit is payable to an

insured on account of the insured's disability and the provision is conditional on the confinement of the insured, the condition is null and void.

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

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

Particulars in policy of group insurance

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

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

Continuing liability after termination

98 (1) In this Section,

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

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

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

- (a) loss of income because of disability;

- (b) death;
- (c) dismemberment; or
- (d) accidental damage to natural teeth,

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

(3) Notwithstanding clause (2)(a), an insurer does not remain liable, under a contract or benefit provision described in that subsection, to pay a benefit for loss of income for the reoccurrence, after the termination of that contract or benefit provision, of a disability that reoccurs after a continuous period of six months, or such longer period as is provided in the contract, during which the group person insured was not disabled.

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

(5) Where a contract of group insurance, herein referred to as the “replacing contract”, is entered into within 31 days of the termination of another contract of group insurance, herein referred to as the “other contract”, and insures the same group or a part of the group insured under the other contract,

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

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

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

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

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

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

Particulars to person covered

99 (1) Except as provided in subsection (2) in the case of a contract of group insurance, an insurer shall issue for delivery by the insured to each group

person insured a certificate or other document in which are set forth the following particulars:

- (a) the name of the insurer and a sufficient identification of the contract;
- (b) the amount or the method of determining the amount of insurance on the group person insured and on any person insured;
- (c) the circumstances under which the insurance terminates, and the rights, if any, upon such termination of the group person insured and of any person insured.

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

Disclosure of exception or reduction

100 (1) Subject to Section 101 and except as otherwise provided in this Section, the insurer shall set forth in the policy every exception or reduction affecting the amount payable under the contract, either in the provision affected by the exception or reduction, or under a heading such as "Exceptions" or "Reductions".

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

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

(4) The exception or reduction mentioned in Section 113 need not be set forth in the policy.

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

Statutory conditions

101 Subject to Section 102, the conditions set forth in the Schedule to this Part are deemed to be part of every contract other than a contract of group insurance and must be printed on or attached to the policy forming part of such contract with the heading "Statutory Conditions". R.S., c. 231, s. 74.

Omission of statutory condition

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

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

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

(4) Statutory conditions 3, 4, 5, 6 and 9, and subject to the restriction in subsection (5), statutory condition 7, may be varied but, where by reason of the variation the contract is less favourable to the insured, a person insured or a beneficiary than it would be if the condition had not been varied, the condition is deemed to be included in the policy in the form in which it appears in Section 101.

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

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

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

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

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

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

and

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

Notice of statutory conditions

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

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

R.S., c. 231, s. 76.

Effect of delivery of policy or renewal

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

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

(b) the contract may be terminated for the non-payment of the premium by the insurer upon 10 days notice of termination given in writing to the insured and mailed postage prepaid and registered to the latest address of the insured on the records of the insurer and the 10 days begin on the day following the date of mailing such notice.

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

Unpaid premium

105 (1) An insurer may

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

(b) sue the insured for unpaid premiums.

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

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

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

Persons with insurable interest

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

(a) the person’s child or grandchild;

(b) the person’s spouse or common-law partner;

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

(d) the person’s officer or employee; and

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

No insurable interest

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

(2) A contract is not void for lack of insurable interest

(a) if it is a contract of group insurance; or

(b) if the person insured has consented in writing to the insurance.

(3) Where the person insured is under the age of 16 years, consent to the insurance may be given by one of the person's parents or by a person standing *in loco parentis* to the person. R.S., c. 231, s. 80.

POLICIES ON LIVES OF MINORS

Capacity of minor

108 (1) Except in respect of the minor's rights as beneficiary, a minor who has attained the age of 16 years has the capacity of a person of the age of 19 years

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

(2) A beneficiary who has attained the age of 18 years has the capacity of a person of the age of 19 years to receive insurance money payable to the beneficiary and to give a valid discharge therefor. R.S., c. 231, s. 81.

MISREPRESENTATION AND NON-DISCLOSURE

Duty to disclose

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

(2) Subject to Sections 110 and 113, a failure to disclose, or a misrepresentation of, such a fact renders a contract voidable by the insurer.

(3) In the case of a contract of group insurance, a failure to disclose or a misrepresentation of such a fact with respect to a group person insured or a person insured under the contract does not render the contract voidable, but, where evidence of insurability is specifically requested by the insurer, the insurance in respect of such a person is, subject to Section 110, voidable by the insurer. R.S., c. 231, s. 82.

Contract not voidable

110 (1) Subject to Section 113 and except as provided in subsection (2),

(a) where a contract, including renewals thereof, except a contract of group insurance, has been in effect continuously for two years with respect to a person insured, a failure to disclose or a misrepresentation of a fact with respect to that person required by Section 109 to be disclosed does not, except in the case of fraud, render the contract voidable;

(b) where a contract of group insurance, including renewals thereof, has been in effect continuously for two years with respect

to a group person insured or a person insured, a failure to disclose or a misrepresentation of a fact with respect to that group person insured or person insured required by Section 109 to be disclosed does not, except in the case of fraud, render the contract voidable with respect to that group person insured or person insured.

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

Reinstatement

111 Sections 109 and 110 apply with necessary changes to a failure at the time of reinstatement of a contract to disclose or a misrepresentation at that time, and the period of two years to which reference is made in Section 110 commences to run in respect of a reinstatement from the date of reinstatement. R.S., c. 231, s. 84.

Prior existence of disease or condition

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

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

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

Misstatement of age

113 (1) Subject to subsections (2) and (3), where the age of the person insured has been misstated to the insurer then, at the option of the insurer, either

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

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

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

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

BENEFICIARIES

Designation of representative or beneficiary

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

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

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

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

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

Designation and payment

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

(2) Where a beneficiary predeceases the person insured or group person insured, as the case may be, and no disposition of the share of the deceased beneficiary in the insurance money is provided in the contract or by declaration, the share is payable

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

(3) A beneficiary designated under Section 114 may, upon the death by accident of the person insured or group person insured, enforce for the beneficiary's own benefit, and a trustee appointed pursuant to Section 116 may enforce as trustee, the payment of insurance money payable to the trustee or beneficiary, and the payment to the beneficiary or trustee discharges the insurer to the extent of the amount paid, but the insurer may set up any defence that it could have set up against the insured or the insured's personal representative. R.S., c. 231, s. 88.

Trustee for beneficiary

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

Payment and assignment

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

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

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

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

(b) a beneficiary.

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

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

Entitlement of beneficiary

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

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

Enforcement of contract by group person insured

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

Simultaneous deaths

120 Unless a contract or a declaration otherwise provides, where a person insured or group person insured and a beneficiary die at the same time or in circumstances rendering it uncertain which of them survived the other, the insurance money is payable in accordance with subsection 115(2) as if the beneficiary had predeceased the person insured or group person insured. R.S., c. 231, s. 93.

Payment into court

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

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

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

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

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

Payment into court for minor

122 (1) Where an insurer admits liability for insurance money payable to a minor and there is no person capable of giving and authorized to give a valid discharge therefor who is willing to do so, the insurer may at any time after 30 days from the date of the happening of the event upon which the insurance money becomes payable, pay the money less the applicable costs mentioned in subsection (2) into court to the credit of the minor.

(2) The insurer may retain out of the insurance money for costs incurred upon payment into court under subsection (1), the sum of \$10 if the amount does not exceed \$1,000, and the sum of \$15 in other cases, and payment of the remainder of the money into court discharges the insurer.

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

Payment for beneficiary under disability

123 Where it appears that a representative of a beneficiary who is under disability may, under the law of the domicile of the beneficiary, accept payments on behalf of the beneficiary, the insurer may make payment to the representative and

any such payment discharges the insurer to the extent of the amount paid. R.S., c. 231, s. 96.

Payment to authorized person

124 Notwithstanding that insurance money is payable to a person, the insurer may, where the contract so provides, but subject always to the rights of an assignee, pay an amount not exceeding \$2,000 to

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

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

Place of payment

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

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

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

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

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

Claimant may sue in Province

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

Information affecting insurance money

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

Undue prominence to policy term

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

Imperfect compliance with statutory condition

129 Where there has been imperfect compliance with a statutory condition as to any matter or thing to be done or omitted by the insured, person insured or claimant with respect to the loss insured against and a consequent forfeiture or avoidance of the insurance in whole or in part, and a Court before which a question relating thereto is tried considers it inequitable that the insurance should be forfeited or avoided on that ground, the Court may relieve against the forfeiture or avoidance on such terms as it considers just. R.S., c. 231, s. 102.

Persons not agent of insured

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

SCHEDULE TO PART VI

STATUTORY CONDITIONS

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

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

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

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

3 (1) *Changes in occupation* - Where after the contract is issued the person insured engages for compensation in an occupation that is classified by the insurer as more hazardous than that stated in this contract, the liability under this contract is limited to the amount that the premium paid would have purchased for the more hazardous occupation

according to the limits, classification of risks and premium rates in use by the insurer at the time the person insured engaged in the more hazardous occupation.

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

(a) reduce the premium rate; or

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

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

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

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

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

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

(3) Where the notice of termination is delivered to the insured, five days notice of termination must be given; where it is mailed to the insured, 10 days notice of termination must be given, and the 10 days begin on the day following the date of mailing of notice.

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

(a) give written notice of claim to the insurer

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

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

not later than 30 days from the date a claim arises under the contract on account of an accident, sickness or disability;

(b) within 90 days from the date a claim arises under the contract on account of an accident, sickness or disability, furnish to the insurer such proof as is reasonably possible in the circumstances of the happening of the accident or the commencement of the sickness or disability, and the loss occasioned thereby, the right of the claimant to receive payment, the claimant's age and the age of the beneficiary if relevant; and

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

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

8 *Insurer to furnish forms for proof of claim* - The insurer shall furnish forms for proof of claim within 15 days after receiving notice of claim, but, where the claimant has not received the forms within that time, the claimant may submit the claimant's proof of claim in the form of a written statement of the cause or nature of the accident, sickness or disability giving rise to the claim and of the extent of the loss.

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

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

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

10 *When moneys payable other than for loss of time* - All moneys payable under this contract, other than benefits for loss of time, must be paid by the insurer within 60 days after it has received proof of claim.

11 *When loss of time benefits payable* - The initial benefits for loss of time must be paid by the insurer within 30 days after it has received proof of claim, and payment must be made thereafter in accordance with the terms of the contract but not less frequently than once in each succeeding 60 days while the insurer remains liable for the payments if the person insured when required to do so furnishes before payment proof of continuing disability.

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

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

PART VII

AUTOMOBILE INSURANCE

Interpretation of Part**131** In this Part,

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

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

“automobile insurance” means insurance

- (a) against liability arising out of
 - (i) bodily injury to or death of a person, or
 - (ii) loss of or damage to property,

caused by an automobile or the use or operation thereof;

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

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

“contract” means a contract of automobile insurance;

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

“insured” means a person insured by a contract whether named or not, and includes any person who is stated in the contract to be entitled to benefits payable under insurance referred to in Section 199, whether or not the person is described therein as an insured person;

“licensed insurer” means an insurer licensed pursuant to Section 5 to carry on the business of automobile insurance in the Province;

“mandatory condition” means a condition in a contract prescribed by the regulations;

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

- (a) the owner or driver of an automobile; or
- (b) a person who is not the owner or driver thereof if the automobile is being used or operated by the person’s employee or agent or any other person on the person’s behalf,

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

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

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

“rating bureau” means any association or body, incorporated or unincorporated, of insurance companies created or organized for the purpose of filing or promulgating rates of premium payable upon contracts of automobile insurance in the Province or that assumes to file or promulgate such rates by agreement among the members thereof or otherwise. R.S., c. 231, s. 104; 1995-96, c. 20, s. 1; 2003 (2nd Sess.), c. 1, s. 8.

APPLICATION OF PART

Application of Part

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

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

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

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

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

(6) Every Assigned Risk Plan shall file with the Superintendent a copy of its constitution, bylaws, rules and regulations and any alterations or additions thereto not later than 10 days after the same are made. R.S., c. 231, s. 105.

Participation in plan

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

(2) Every insurer carrying on the business of automobile insurance in the Province must be a participant in and is subject to the terms and conditions of the facility association plan of operations that will provide, in accordance with Sections 177 to 197, payment with respect to claims for damages made by persons who are not insured under a contract within the meaning of Section 176 and who have no other insurance or have other insurance that is inadequate, with respect to the damages claimed, and shall, in accordance with this Act and the articles of association or bylaws of a plan to which subsection (1) applies, establish and implement a plan of operation and carry out its obligations in the Province with respect to that plan of operation.

(3) The responsible official of any plan referred to in subsection (1) shall file with the Superintendent a copy of the constitution, bylaws, rules and regulations thereof and, in case of any change that may be proposed or contemplated thereafter, shall also file a copy of such change at least 30 days before the change is to go into effect.

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

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

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

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

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

Representation of insurer and keeping records in Province

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

(2) An insurer who contravenes this Section is guilty of an offence and liable to a fine not exceeding \$5,000 for each day the offence occurs or continues.

(3) Notwithstanding subsection (2), the Superintendent may suspend or cancel the licence of a person authorized to carry on the business of automobile insurance in the Province who contravenes this Section.

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

LEVY PURSUANT TO HEALTH SERVICES AND INSURANCE ACT AND THIS ACT

Levy

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

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

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

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

(5) Where an insurer whose licence to transact automobile insurance in the Province has been suspended pursuant to subsection (2) fails to remedy the default within 90 days, the Superintendent shall, upon giving notice to the insurer, revoke the licence of the insurer.

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

(7) The remuneration of the administrator appointed pursuant to subsection (6) is in the absolute discretion of the Superintendent and all costs, including the remuneration of the administrator and the reinsurance of the automo-

mobile insurance contracts in the Province, are borne by the insurer whose licence was revoked.

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

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

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

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

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

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

Levy on each insured vehicle

136 (1) In each year, every automobile insurer shall pay a levy of 50¢ with respect to each vehicle insured by that automobile insurer for the purpose of recovering costs incurred by volunteer fire departments in responding to motor vehicle accidents.

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

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

(4) Where an automobile insurer fails to remit the funds payable with respect to the levy in accordance with this Section, the Superintendent may

suspend the licence of the automobile insurer to transact automobile insurance in the Province effective after August 31st of the year in which the funds are due.

(5) Subsections 135(3) to (13) apply with necessary changes to a licence suspension pursuant to this Section as if it were a licence suspension pursuant to subsection 135(2).

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

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

- (8) The Governor in Council may make regulations respecting
- (a) the calculation and remittance of the funds payable by automobile insurers with respect to the levy;
 - (b) the notification of automobile insurers with respect to the levy and the funds payable;
 - (c) defining any word or expression used in this Section and not defined in this Act;
 - (d) any matter or thing that the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Section.

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

APPROVAL OF FORMS

Approval by Superintendent

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

(2) An insurer may require additional information in an approved application form but such additional information does not constitute any part of the application for the purpose of Section 140.

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

(4) Except as to matters in Section 156, the Superintendent may, where the Superintendent considers it to be in the public interest, approve a form of motor vehicle liability policy or endorsement thereto that extends the insurance beyond that prescribed in this Part.

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

(6) The Superintendent may approve a form of owner's policy containing insuring agreements and provisions in conformity with this Part for use by insurers in general, and that, for the purpose of Section 139, is the standard owner's policy.

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

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

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

APPLICATION AND POLICY

Persons forbidden to act as agent

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

Requirements respecting application

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

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

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

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

(5) Upon every application form and policy there must be printed or stamped in conspicuous type a copy of subsection 140(1).

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

(7) Where a certificate referred to in subsection (6) is issued, subsection (5) and 172(2) apply to the certificate. R.S., c. 231, s. 110.

Misrepresentation or contravention and defence

140 (1) Where

- (a) an applicant for a contract
 - (i) gives false particulars of the described automobile to be insured, to the prejudice of the insurer, or
 - (ii) knowingly misrepresents or fails to disclose in the application any fact required to be stated therein;
- (b) the insured contravenes a term of the contract or commits a fraud; or
- (c) the insured wilfully makes a false statement with respect to a claim under the contract,

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

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

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

Mandatory conditions

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

(2) Subject to subsections (3), (4) and (5) and 137(3) and Section 172,

- (a) the mandatory conditions are part of every contract;
- (b) the mandatory conditions must be printed in every policy under the heading “Mandatory Conditions”; and
- (c) no variation from, omission of or addition to a mandatory condition is binding upon the insured.

(3) The mandatory conditions do not apply to insurance coming within Sections 176 and 199.

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

(5) Notwithstanding subsection (2), no contract of automobile insurance or policy document or form printed before November 1, 2003, is invalid or of no effect for the reason only that it bears

- (a) the words “Statutory Conditions” or “statutory conditions” instead of “Mandatory Conditions” or “mandatory conditions”;
- (b) words that may have a different spelling or be presented in a different form, but have an identical intent or purpose; or
- (c) different numbering or cross-referential numbering that conveys the same effect. 2003 (2nd Sess.), c. 1, s. 12.

Excluded driver

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

Effect of income-continuation benefit plan

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

Limitation on liability

144 (1) In this Section,

“minor injury” means a personal injury that

- (a) does not result in a permanent serious disfigurement;
- (b) does not result in a permanent serious impairment of an important bodily function caused by a continuing injury that is physical in nature; and
- (c) resolves within 12 months following the accident;

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

(2) This Section and any regulations made with respect to this Section do not apply to any action for damages with respect to an incident that occurred on or after April 28, 2010.

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

(4) In an action for loss or damage from bodily injury or death arising directly or indirectly from the use or operation of an automobile, a judge shall, on motion made before trial with the consent of the parties or in accordance with an order of a judge who conducts a pretrial conference, determine, for the purpose of subsection (3), whether, as a result of the use or operation of the automobile, the injured person has suffered a minor injury.

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

(6) Where no motion is made under subsection (4), the judge shall determine for the purpose of this Section whether, as a result of the use or operation of the automobile, the injured person has suffered a minor injury. 2003 (2nd Sess.), c. 1, s. 12; 2010, c. 18, s. 2.

Excluded damages

145 (1) Notwithstanding any enactment or any rule of law, but subject to subsections 144(4) and 148(5), the owner, operator or occupants of an automobile, any person present at the incident and any person who is or may be vicariously liable with respect to any of them, are not liable in an action in the Province for the following damages for income loss and loss of earning capacity from bodily injury or death arising directly or indirectly from the use or operation of the automobile:

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

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

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

(3) Subsections (1), 144(3) and 148(3) do not protect a person from liability if the person is defended in the action by an insurer that is not licensed to undertake automobile insurance in the Province, unless the insurer has filed an undertaking to become licensed to undertake automobile insurance in the Province. 2010, c. 18, s. 3.

Discount rate

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

Excess insurance

147 Nothing in Sections 143 to 146 or 148 prevents an insurer from providing a policy or endorsement to compensate an insured with respect to damages for any award for pain or suffering or any other non-monetary loss in excess of the amount prescribed in the regulations or with respect to any other limitation on damages in those Sections. 2003 (2nd Sess.), c. 1, s. 12; 2010, c. 18, s. 4.

Accident claims

148 (1) In this Section,

“accident” means an accident or other incident arising directly or indirectly from the use or operation of an automobile;

“accident claim” means a claim for loss or damages for bodily injury or death arising from an accident;

“claimant” means a person injured as a result of an accident;

“minor injury”, with respect to an accident, means

(a) a sprain;

(b) a strain; or

(c) a whiplash-associated disorder injury,

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

(2) This Section and any regulations made pursuant to or with respect to this Section apply to any accident claim with respect to an accident that occurred on or after April 28, 2010.

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

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

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

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

(7) The Governor in Council may make regulations

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

(b) providing for the assessment of injuries, including regulations establishing or adopting guidelines, best practices or other methods for assessing whether an injury is or is not a minor injury;

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

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

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

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

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

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

(8) A regulation made pursuant to subsection (7) may be made retroactive in its effect to a day not earlier than April 28, 2010.

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

MOTOR VEHICLE LIABILITY POLICIES

Owner's policy

149 (1) Every contract evidenced by an owner's policy insures the person named therein, and every other person who with the person's consent personally drives an automobile owned by the insured named in the contract and within the description or definition thereof in the contract, against liability imposed by law upon the insured named in the contract or that other person for loss or damage

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

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

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

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

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

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

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

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

Non-owner's policy

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

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

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

Owner does not include lienholder

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

Territorial limit

152 Insurance under Sections 149 and 150 applies to the ownership, use or operation of the insured automobile within Canada and the United States of America, and upon a vessel plying between ports of those countries. R.S., c. 231, s. 117.

Rights of unnamed insured

153 Any person insured by but not named in a contract to which Section 149 or 150 applies may recover indemnity, in the same manner and to the same extent as if named therein as the insured, and for that purpose is deemed to be a party to the contract and to have given consideration therefor. R.S., c. 231, s. 118.

Obligation of insurer

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

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

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

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

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

Contamination

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

Insurer not liable

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

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

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

Exclusions respecting business

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

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

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

Exclusions respecting equipment

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

Exclusions respecting use

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

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

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

(c) the automobile is used as a taxicab, public bus or sight-seeing conveyance, or for carrying passengers for compensation or hire.

(2) In clause (1)(b), "radioactive material" means

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

(b) radioactive waste material;

(c) unused enriched nuclear fuel rods; or

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

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

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

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

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

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

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

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

Minimum liability under policy

160 (1) Every contract evidenced by a motor vehicle liability policy insures, in respect of any one accident, to the limit of at least \$500,000, exclusive of interest and costs, against liability resulting from bodily injury to or the death of one or more persons and loss of or damage to property.

(2) The insurer may, instead of specifying a limit in the policy for an inclusive amount, specify a limit of liability of at least \$500,000, exclusive of interest and costs, against liability resulting from bodily injury to or the death of one or more persons and a limit of liability of at least \$500,000, exclusive of interest and costs, against liability for loss of or damage to property.

(3) Nothing in this Section or this Part precludes an insurer, with respect to a limit or limits in excess of those specified in subsection (1) or (2), from increasing or reducing the limit or limits specified in the contract with respect to the use or operation of the automobile by a named person, but no reduction is effective for a limit less than that required under subsection (1). R.S., c. 231, s. 125; 2003 (2nd Sess.), c. 1, s. 14.

Liability in other jurisdiction

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

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

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

(c) the insured, by acceptance of the policy, constitutes and appoints the insurer the insured's irrevocable attorney to appear and defend in any province of Canada in which an action is brought against the insured

arising out of the ownership, use or operation of the automobile. R.S., c. 231, s. 126.

Prohibited defences

162 (1) In any action in the Province against an insurer transacting the business of automobile insurance in the Province or its insured arising out of an automobile accident in the Province, the insurer shall appear and shall not set up any defence to a claim under a contract made outside the Province, including any defence as to the limit or limits of liability under the contract, that might not be set up if the contract were evidenced by a motor vehicle liability policy issued in the Province, and the contract made outside the Province is deemed to include the benefits prescribed pursuant to Section 199.

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

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

Separate excess contract

163 (1) Nothing in this Part precludes an insurer from providing insurance under a contract evidenced by a motor vehicle liability policy restricted to a limit in excess of that provided by another designated contract evidenced by a motor vehicle liability policy whether the designated contract is a first loss insurance or an excess insurance.

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

Reimbursement agreement

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

Liability of insurer under nuclear energy contract

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

(2) Where an insured is covered, whether named therein or not, under a contract evidenced by a motor vehicle liability policy, for loss or damage

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

(a) the motor vehicle liability insurance is excess to the nuclear energy hazard liability insurance and the insurer under the contract of motor vehicle liability insurance is not liable to pay beyond the minimum limits prescribed by Section 160; and

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

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

Effect of payments under policy

166 (1) Where an insurer makes a payment on behalf of an insured under a contract evidenced by a motor vehicle liability policy to a person who is or alleges to be entitled to recover from the insured covered by the policy, the payment constitutes, to the extent of the payment, a release by the person or the person's personal representative of any claim that the person or the person's personal representative or any person claiming through or under the person or by virtue of the *Fatal Injuries Act* may have against the insured and the insurer.

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

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

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

Application for direction

167 (1) Where a person is insured under more than one contract evidenced by a motor vehicle liability policy, whether the insurance is first loss insurance or excess, and a question arises under clause 154(b) between an insurer and the insured or between the insurers, as to which insurer shall undertake the obligation to defend in the name and on behalf of the insured, whether or not any insurer denies

liability under its contract, the insured or any insurer may apply to the Supreme Court of Nova Scotia and the Court shall give directions as may appear proper with respect to the performance of the obligation.

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

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

(4) Where indemnity is provided to the insured under two or more contracts and one or more of them are excess insurance, the insurers shall, as between themselves, contribute to the payment of expenses, costs and reimbursement for which provision is made in Section 154 in accordance with their respective liabilities for damages awarded against the insured. R.S., c. 231, s. 132.

Action by claimant against insurer

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

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

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

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

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

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

(c) any contravention of the *Criminal Code* (Canada) or statute of any province of Canada, or of any state or the District of

Columbia of the United States of America by the owner or driver of the automobile,

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

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

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

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

(a) there are or may be other claimants; or

(b) there is no person capable of giving and willing to give or authorized to give it a valid discharge for payment,

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

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

(9) Notwithstanding anything therein to the contrary, every contract evidenced by a motor vehicle liability policy is, for the purpose of this Section, deemed to provide all the types of coverage mentioned in Section 159, but the insurer is not liable to a claimant with respect to such coverage in excess of the limits mentioned in Section 160.

(10) Where one or more contracts provide for coverage of a type mentioned in Section 157 or 158, then, except as provided in subsection (12), the insurer may

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

(b) as against a claimant,

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

(11) Where one or more contracts provide for coverage in excess of the limits mentioned in Section 160, then, except as provided in subsection (12), the insurer may

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

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

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

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

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

- (c) the limits mentioned in Section 160; or
- (d) the minimum limits required for that type of coverage by or pursuant to another Act,

whichever is the greater.

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

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

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

- (a) contest the liability of the insured to any party claiming against the insured;
- (b) contest the amount of any claim made against the insured;
- (c) deliver any pleadings with respect to the claim of any party claiming against the insured;
- (d) have production and discovery from any party adverse in interest; and
- (e) examine and cross-examine witnesses at the trial to the same extent as if it were a defendant in the action.

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

Recovery by convicted insured restricted

169 (1) An insured may not recover from the insured's insurer any amount with respect to damage to the insured's own automobile or injuries sustained by the insured while in a condition for which the insured is convicted of an offence under section 320.14 or under or in connection with circumstances for which the insured is convicted of an offence under section 320.15 of the *Criminal Code* (Canada) unless the insured establishes that the insured's impairment by alcohol or drug was not the proximate cause of the accident.

(2) An insured may not recover from the insured's insurer any amount with respect to damage to the insured's own automobile or injuries sustained by the insured during or in connection with circumstances for which the insured is convicted of an offence under section 320.13 or 320.17 of the *Criminal Code* (Canada) unless the insured establishes that such circumstances were not the proximate cause of the accident.

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

(4) Notwithstanding subsection (3), no contract of automobile insurance or policy document or form printed on or before November 1, 2003, is invalid or of no effect for the reason only that it does not have printed on it the provisions of subsection (2) or words to like effect. R.S., c. 231, s. 134; 2003 (2nd Sess.), c. 1, s. 15; 2018, c. 3, s. 37.

Notice of action and disclosure of particulars

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

(2) Every insured against whom an action is commenced for damages occasioned by an automobile shall, upon recovery of a judgment against the insured, disclose to a judgment creditor entitled to the benefit of any motor vehicle liability policy particulars of such contract within 10 days after written demand therefor. R.S., c. 231, s. 135.

PHYSICAL DAMAGE COVER

Exclusions and limitations

171 Subject to subsection 137(1), the insurer may provide in a contract such exclusions and limitations with respect to loss of, or damage to, or the loss of use of the automobile as it considers necessary. R.S., c. 231, s. 136.

Partial payment clause

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

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

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

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

Adjustment of claim

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

(2) Where notice is given or proof of loss is made by a person other than the insured because the insured cannot be located, or neglects, refuses or is unable to give notice and make claim under mandatory conditions 4 and 7 as set forth in Schedule 1 of the Automobile Insurance Contract Mandatory Conditions Regulations made under this Act, the insurer may, notwithstanding subsection (1) but in any event not earlier than 60 days from delivery of the proof required under clause (1)(c) of mandatory condition 4, adjust and pay the claim to the other person having an interest indicated in the contract. R.S., c. 231, s. 138.

DIRECT COMPENSATION FOR PROPERTY DAMAGE

Recovery for property damage

174 (1) This Section applies if

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

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

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

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

(3) Where this Section applies, an insured is entitled to recover for the damages to the insured's automobile and its contents and for loss of use from the insured's insurer under the coverage described in subsection 149(1) as though the insured were a third party.

(4) Recovery under subsection (3) must be based on the degree of fault of the insurer's insured as determined under the fault determination rules prescribed by the regulations under clause 175(1)(a).

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

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

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

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

(6) Where this Section applies,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Regulations

175 (1) The Governor in Council may make regulations

(a) prescribing rules for determining the degree of fault in various situations for loss or damage arising directly or indirectly from the use or operation of an automobile;

(b) respecting indemnification and subrogation when Section 174 applies;

(c) prescribing classes of contracts for the purpose of subsection 174(7);

(d) prescribing the circumstances in which a contract belonging to a class prescribed under clause (c) must contain a provision described in subsection 174(9);

(e) prescribing the amount, or the minimum or maximum amount, of a reduction required by a provision described in clause 174(7)(b) or subsection 174(9).

(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*. 2011, c. 35, s. 6.

LIMITED ACCIDENT INSURANCES

Required contents of certain contracts

176 (1) In this Section,

“insured automobile” means the automobile as defined or described in the contract;

“person insured under the contract” means

(a) in respect of a claim for damage to the insured automobile, the owner of the automobile;

(b) in respect of a claim for damage to the contents of the insured automobile, the owner of the contents;

(c) in respect of a claim for bodily injury or death,

(i) any person while driving, being carried in or upon or entering or getting on to or alighting from the insured automobile,

(ii) the insured named in the contract and, where residing in the same dwelling premises as the insured named in the contract, the insured’s spouse or common-law partner and any dependent relative,

(A) while driving, being carried in or upon or entering or getting on to or alighting from an uninsured automobile, or

(B) who is struck by an uninsured or unidentified automobile, but not a person struck while driving, being carried in or upon or entering or getting on to or alighting from railway rolling stock that runs on rails,

(iii) if the insured named in the contract is a corporation, unincorporated association or partnership, any director, officer, employee or partner of the insured named in the contract, for whose regular use the insured automobile is furnished and, where residing in the same dwelling place, the insured’s spouse or common-law partner and any dependent relative,

(A) while driving, being carried in or upon or entering or getting on to or alighting from an uninsured automobile, or

(B) who is struck by an uninsured or unidentified automobile, but not a person struck while driving, being carried in or upon or entering or getting on to or alighting from railway rolling stock that runs on rails,

if such director, officer, employee or partner or the spouse or common-law partner of that director, officer, employee or partner is not the owner of an automobile insured under a contract;

“unidentified automobile” means an automobile with respect to which the identity of either the owner or driver cannot be ascertained;

“uninsured automobile” means an automobile with respect to which neither the owner nor driver of it has applicable and collectable bodily injury liability and property damage liability insurance for its ownership, use or operation, but does not include an automobile

owned by or registered in the name of the insured or the insured's spouse or common-law partner.

(2) This Section applies to all contracts evidenced by motor vehicle liability policies made or renewed on or after July 1, 1996, and all contracts evidenced by motor vehicle liability policies that were subsisting on that day are deemed to provide for payments referred to in subsection (2) in respect of an accident arising out of the use or operation of an automobile occurring on or after that day.

(3) Every contract evidenced by a motor vehicle liability policy must provide for payment by the insurer of all sums that

(a) a person insured under the contract is legally entitled to recover from the owner or driver of an uninsured automobile or unidentified automobile as damages for bodily injuries resulting from an accident involving an automobile;

(b) a person is legally entitled to recover from the owner or driver of an uninsured automobile or unidentified automobile as damages for bodily injury to or the death of a person insured under the contract resulting from an accident involving an automobile; and

(c) a person insured under the contract is legally entitled to recover from the identified owner or driver of an uninsured automobile as damages for accidental damage to the insured automobile or its contents, or to both the insured automobile and its contents, resulting from an accident involving an automobile,

subject to the terms, conditions, provisions, exclusions and limits prescribed by the regulations.

(4) A dependent relative referred to in the definition "person insured under the contract" in subsection (1) who

(a) is the owner of an automobile insured under a contract;

or

(b) sustains bodily injuries or dies as the result of an accident while driving, being carried in or upon or entering or getting on to or alighting from the dependent relative's own uninsured automobile,

is not a dependent relative for the purpose of this Section.

(5) The Governor in Council may make regulations

(a) prescribing, amending or altering the terms, conditions, provisions, exclusions and limits with respect to payments under subsection (3);

(b) deeming any term, condition, provision, exclusion or limit as prescribed, amended or altered by a regulation made pursuant to clause (a) to be included in any motor vehicle liability policy made or renewed on or after the effective date of the regulation and in any motor vehicle liability policy that is subsisting on the effective date of the regulation;

(c) requiring that terms, conditions, provisions, exclusions and limits as prescribed, amended or altered by a regulation made pursuant to clause (a) be attached to or included in every motor vehicle liability policy as a schedule in or to the policy.

(6) Any payments made or available to a person under a contract of insurance referred to in subsection (3) constitute, to the extent of such payments, a release, by the person or the person's personal representative or any person claiming through or under the person or by virtue of the *Fatal Injuries Act*, of any claim that the person may have under subsection (3), but nothing in this subsection precludes an insurer from demanding, as a condition precedent to payment, a release to the extent of the payment from the person insured or the person's personal representative or any other person.

(7) A release within the meaning of subsection (6) does not enure to the benefit of the person or persons against whom the insurer has a right to subrogation under this Act. 1995-96, c. 20, s. 3; 2000, c. 29, s. 24.

Application of Sections 178 to 197

177 (1) Sections 178 to 197 apply only to matters arising out of accidents involving an automobile occurring on or after July 1, 1996.

(2) Sections 178 to 197 apply only to a claim for damages by a person who is not insured under a contract within the meaning of Section 176 and who has no other insurance, or who has other insurance that is inadequate, with respect to the damages claimed, and, subject to subsection (4), no person other than one who is not insured under a contract within the meaning of Section 176 and who has no other insurance, or who has other insurance that is inadequate, with respect to the damages claimed, may apply to the Facility Association for payment of damages in accordance with Sections 178 to 197.

(3) Notwithstanding any other provision of this Act, no person may apply to the Facility Association pursuant to Section 178 or 179 for payment of damages in respect of damage to an automobile owned by or registered in the name of the person, notwithstanding that the person may have had no applicable and collectable insurance with respect to that automobile at the time of the accident in which the damage was incurred if, at the time of the accident, the person was driving the automobile or had the care or control of it, whether it was in motion or not.

(4) Where a question arises between a person's insurer and the Facility Association as to whether a person is insured under a contract of insurance within the meaning of Section 176 or has other insurance with respect to the damages claimed, the person may, at the person's option, make a claim for damages against the insurer or apply to the Facility Association for payment of damages in accordance with Sections 178 to 197.

(5) Where, in the circumstances described in subsection (4), a person elects to make a claim for damages against the person's insurer and liability is denied on the grounds that the person is not insured under a contract within the meaning of Section 176 and has no other insurance with respect to the damages claimed, the person may proceed, in accordance with Sections 178 to 197, to apply to the Facility Association for payment of damages.

(6) Where, in the circumstances described in subsection (4) or (5), a person elects to apply, in accordance with Sections 178 to 197, to the Facility Association for payment of damages and the Facility Association makes a payment to the person in accordance with those Sections, the Facility Association is subrogated to the extent of those payments to the rights of the person to whom the amount is paid and, where in the opinion of the Facility Association, the person is insured under a contract within the meaning of Section 176 or has other insurance with respect to the damages claimed, the Facility Association may bring an action in its name or in the name of such person against the insurer to recover the amount of the payment.

(7) No payment made by the Facility Association in the circumstances described in subsection (6) bars the person to whom it is made from making a claim against the person's insurer for damages in excess of the amount of the payment by the Facility Association. 1995-96, c. 20, s. 3.

Payment by Facility Association

178 (1) A person who would have a cause of action against an owner of an automobile or a driver of an automobile, other than an automobile owned by or under the care and control of that person, for damages for injuries to or the death of any person or damage to property, arising out of the operation, care or control of the automobile in the Province, except a person entitled to make application pursuant to Section 179, may make application in a form provided by the Facility Association for payment by the Facility Association of the damages in respect of such death, personal injury or property damage.

(2) Upon receipt of an application pursuant to subsection (1), the Facility Association shall, by registered mail, forward a notice of the application for payment by the Facility Association to the owner and the driver of the automobile against whom liability for the damages occasioned by the operation of the automobile is alleged, to their latest known addresses or to their latest addresses as recorded with the Registrar of Motor Vehicles.

(3) The Facility Association may, in respect of an application made pursuant to subsection (1), make payment, subject to the same conditions, limits, deductions and exclusions that would apply to an application by a judgment creditor in accordance with Sections 179 to 197, with the necessary modifications, of an amount that it considers proper in all the circumstances if

(a) the applicant executes a release under seal of all claims arising out of the automobile accident, subject to subsections 177(6) and (7), that occasioned the damages to be paid by the Facility Association; and

(b) subject to clause (c), the owner and driver of the automobile, against whom liability for the damages occasioned by the operation of the automobile is alleged, execute a consent to the payment of the sum for damages by the Facility Association and also execute under seal an undertaking in a form provided by the Facility Association to repay to the Facility Association the amount to be paid by the Facility Association; or

(c) the person to whom a notice is sent in accordance with subsection (2) does not reply within 30 days of the date upon which the notice was sent either

(i) by mail, or

(ii) by attending in person at the place named in the notice,

and dispute liability to the person making application pursuant to subsection (1).

(4) Where an amount is paid out by the Facility Association pursuant to subsection (3) or (5), the Facility Association is, to the extent of the amount paid out, deemed to be a creditor of every person against whom liability for the damages occasioned by the operation of the automobile is alleged and who was given notice pursuant to subsection (2), and upon the filing with a prothonotary of the Supreme Court of Nova Scotia of a certificate of the Facility Association in a form prescribed by the regulations stating the amount paid out, judgment may be entered in the name of the Facility Association as a judgment of the Supreme Court, and, without the consent of the Facility Association, no execution under a judgment obtained with respect to the damages referred to above may be made by any person other than the Facility Association against the property of the judgment debtor until the judgment debt of the Facility Association is satisfied.

(5) The Facility Association may, in its discretion, make interim payments to claimants claiming damages for personal injury if the responsible person or persons do not dispute their liability after a notice is sent to them in accordance with subsection (2). 1995-96, c. 20, s. 3.

Application for payment where judgment

179 Subject to Section 184, where a person obtains in any court in the Province a judgment against

(a) an owner of an automobile or a driver of an automobile, other than an automobile owned by or under the care or control of the person, for damages for injury to or the death of any person or damage to property, arising out of the operation, care or control of an automobile in the Province; or

(b) a party unknown as contemplated by Section 187, for damages for injury to or the death of any person arising out of the operation, care or control of an automobile in the Province,

upon the determination of all proceedings, including appeals, the person may apply to the Facility Association for payment of the amounts in respect of the judgment to which the person is entitled in accordance with Sections 178 to 197. 1995-96, c. 20, s. 3.

Duty to make payment

180 The Facility Association shall pay out to the person the amount of the judgment including the costs included in the judgment, or that part of the judgment including the costs to which the person is entitled, if

(a) the person makes an affidavit

(i) as to what amount the person has recovered or is or was entitled to recover from any source, for or in respect of any

injury, death or damage to a person or property arising out of the operation, care or control of the automobile by the owner or driver of it against whom the judgment was obtained whether or not in the action damages were claimed for or in respect of the injury, death or damage and as to what compensation or services or benefits with a pecuniary value the person has recovered or received or is or was entitled to recover or receive for or in respect of the injury, death or damage, and

(ii) that the application is not made by or on behalf of an insurer in respect of any amount paid or payable by the insurer by reason of the existence of a contract of insurance and that, subject to subsection 177(4), no part of the amount sought to be paid by the Facility Association is sought in lieu of making a claim or receiving a payment that is or was payable by reason of the existence of a contract of insurance and that no part of the amount sought will be paid to an insurer to reimburse or otherwise indemnify an insurer in respect of any amount paid or payable by the insurer by reason of the existence of a contract of insurance; and

(b) the solicitor for the person makes an affidavit

(i) that the judgment is a judgment as described in Section 179,

(ii) giving particulars of the amount of damages for or in respect of injury or death or damage to property and the costs included in the judgment,

(iii) that in so far as the solicitor was advised by any person and learned of any facts during the litigation

(A) the solicitor, subject to subsection 177(4), has commenced action against all persons against whom the person might reasonably be considered as having a cause of action for or in respect of the injury, death or damage to person or property as described in subclause (a)(i),

(B) the application is not made by or on behalf of an insurer in respect of any amount paid or payable by the insurer by reason of the existence of a contract of insurance and that, subject to subsection 177(4), no part of the amount sought to be paid by the Facility Association is sought in lieu of making a claim or receiving a payment that is or was payable by reason of the existence of a contract of insurance and that no part of the amount sought will be paid to an insurer to reimburse or otherwise indemnify an insurer in respect of any amount paid or payable by the insurer by reason of the existence of a contract of insurance, and

(C) that except as disclosed in the applicant's affidavit, the person is and was not entitled to recover, from any source, nor to receive compensation or services or benefits with a pecuniary value, for or in respect of any injury, death or damage to person or property as described in subclause (a)(i), and

(iv) that the action was defended throughout to judgment or that there was a default or a consent or agreement by or on behalf of the defendant and that the solicitor complied with Section 184; and

(c) the affidavits together with

(i) a copy of the statement of claim,

(ii) a certified copy of the judgment,

(iii) the assignment of judgment, and

(iv) where applicable, the solicitor's taxed bill of costs,

are forwarded to the Facility Association. 1995-96, c. 20, s. 3.

Objections to application for payment

181 (1) Where, on an application to the Facility Association,

(a) all the documents required by Section 180 are not forwarded;

(b) any matter required to be in an affidavit is omitted;

(c) the amount requested to be paid by the Facility Association is, in its opinion, greater than the amount to which the applicant is entitled under Sections 178 to 197; or

(d) for any reason, the Facility Association wishes the application for payment to go before a judge of the Supreme Court of Nova Scotia for an order for payment by the Facility Association,

the Facility Association shall, within a reasonable period of time, advise the person of its objections to the application for payment and, subject to subsection (2), advise the person that the person must obtain an order of a judge of the Supreme Court for payment by the Facility Association.

(2) The Facility Association shall advise the person to remedy any objection it may have against payment and, where the objection is remedied to the satisfaction of the Facility Association, it shall then make payment as hereinbefore provided. 1995-96, c. 20, s. 3.

Application to judge of Supreme Court

182 Where a person is advised that payment may not be made except by order of a judge of the Supreme Court of Nova Scotia, the person may apply to a judge of the Court upon notice to the Facility Association, for an order directing payment by the Facility Association of the amount in respect of the judgment to which the person is entitled under Sections 178 to 197. 1995-96, c. 20, s. 3.

Powers of Court on application

183 (1) A judge of the Supreme Court of Nova Scotia may make an order directed to the Facility Association requiring it, subject to Sections 178 to 197, to pay the amount in respect of the judgment to which the judgment creditor is entitled in accordance with those Sections, if the applicant, in the application, satisfies the judge that

(a) the applicant has obtained a judgment as set out in Section 179 stating, whether against an owner, a driver or a party

unknown, the amount of the judgment and the amount owing on the judgment at the date of the application;

(b) subject to subsection 177(4), the applicant has commenced action against all persons against whom the applicant might reasonably be considered as having a cause of action for or in respect of any injury, death or damage to person or property arising out of the operation, care or control of the automobile by the owner or driver against whom the judgment was obtained;

(c) the applicant has prosecuted every action in good faith to judgment or dismissal;

(d) with respect to the amount to be paid, the applicant has not recovered and is and was not entitled to recover, from any source, any amount for or in respect of the injury, death or damage to person or property described in clause (b);

(e) with respect to the amount to be paid, the applicant has not received and is and was not entitled to receive from any source any compensation or services or benefits with a pecuniary value for or in respect of the injury, death or damage to person or property described in clause (b);

(f) the application is not made by or on behalf of an insurer in respect of any amount paid or payable by the insurer by reason of the existence of a contract of insurance, and, subject to subsection 177(4), no part of the amount sought to be paid out by the Facility Association is sought in lieu of making a claim or receiving a payment that is or was payable by reason of the existence of a contract of insurance and no part of the amount sought will be paid to an insurer to reimburse or otherwise indemnify an insurer in respect of any amount paid or payable by the insurer by reason of the existence of a contract of insurance; and

(g) the amount sought to be paid out by the Facility Association does not exceed the maximum amount payable under Section 193.

(2) The Facility Association may appear and be heard on the application referred to in subsection (1) and may show cause why the order should not be made. 1995-96, c. 20, s. 3.

Restriction on powers of Court

184 (1) Where an action is commenced and the defendant

(a) fails to file and serve a statement of defence;

(b) fails to appear in person or by counsel at an examination for discovery, trial or appeal or notifies the plaintiff that such failure is likely; or

(c) consents or agrees to the entering of judgment,

no order may be made pursuant to Section 183, and no money is required to be paid by the Facility Association in respect of a judgment obtained on such proceedings, unless, before taking any further step in the proceedings, the plaintiff gives written notice, in the form prescribed by the regulations, to the Facility Association of such

failure, notification, consent or agreement and affords it reasonable time to investigate the circumstances of the claim and an opportunity to take such action as it considers advisable pursuant to subsection (2).

(2) Where the Facility Association receives notice pursuant to subsection (1), it may, where it considers it advisable, on behalf and in the name of the defendant, take any step to enforce the defendant's right to compensation or indemnity in respect of or arising out of the claim that is available to the defendant, and take any step in the proceedings, including a consent to judgment in such amount as it may consider proper in the circumstances, and all acts done in accordance with this subsection are deemed to be the acts of the defendant. 1995-96, c. 20, s. 3.

Prerequisite to payment by Association

185 (1) No money is required to be paid by the Facility Association in compliance with an order made pursuant to Section 183 until the judgment of the applicant or the portion of the judgment for which the Facility Association is liable or the applicant's interest in the judgment is assigned to the Facility Association.

(2) Upon filing a copy of the assignment of judgment, certified by the Facility Association to be a true copy, with the registrar, prothonotary or clerk, as the case may be, of the court in which the judgment was obtained, the Facility Association shall, to the extent of the amount of the assignment, be deemed to be the judgment creditor.

(3) Where execution is issued in the name of the judgment creditor and a copy of the assignment of judgment, certified in accordance with subsection (2), is filed with the sheriff having the execution order, subsection (2) applies with necessary changes. 1995-96, c. 20, s. 3.

Application for order permitting action

186 Where injury to or the death of any person arises out of the operation, care or control of an automobile in the Province but the identity of the automobile, the owner and the driver of it cannot be established, any person who would have a cause of action against the owner or driver in respect of such injury or death may, upon notice to the Facility Association, apply to a judge of the Supreme Court of Nova Scotia for an order permitting the person to bring an action in the Supreme Court against a nominal defendant to be designated as a party unknown. 1995-96, c. 20, s. 3.

Powers of Court on application

187 A judge of the Supreme Court of Nova Scotia may make an order permitting the applicant to bring an action against a party unknown if satisfied that

- (a) there are reasonable grounds for bringing the action;
- (b) all reasonable efforts have been made to ascertain the identity of the automobile involved and of the owner and driver of it;
- (c) the identity of the automobile involved and of the owner and driver of it cannot be established; and
- (d) the application is not made by or on behalf of an insurer in respect of any amount paid or payable by reason of the existence of a con-

tract of insurance, and, subject to subsection 177(4), no part of the amount sought to be recovered in the intended action is sought in lieu of making a claim or receiving a payment that is or was payable by reason of the existence of a contract of insurance and no part of the amount so sought will be paid to an insurer to reimburse or otherwise indemnify the insurer in respect of any amount paid or payable by it by reason of the existence of a contract of insurance. 1995-96, c. 20, s. 3.

Rights of Facility Association

188 (1) In any action brought against a party unknown pursuant to Sections 186 and 187, the Facility Association has all the rights of a defendant in the action, but nothing in this Section imposes any liability on the Facility Association.

(2) In any action to which subsection (1) applies, the Facility Association may plead the general issue and give the special matter in evidence. 1995-96, c. 20, s. 3.

Application of Sections 186 and 187

189 (1) Where an action for damages for injury to or the death of any person, arising out of the operation, care or control of an automobile in the Province has been dismissed and the judge, in dismissing the action, states in writing that the injury or death arose out of the operation, care or control of an automobile

(a) the identity of which and the owner and driver of which is not established; or

(b) at a time when such automobile was, without the consent of the owner, in the possession of some person other than the owner and the identity of the driver is not established,

Sections 186 and 187 apply for a period of three months from the date of such dismissal, notwithstanding any Act limiting the time within which an action may be brought.

(2) Where, in accordance with subsection (1), an application is made pursuant to Section 186, clause 187(c) does not apply. 1995-96, c. 20, s. 3.

Application to add party unknown as defendant

190 (1) Where an action for damages for injury to or the death of any person arising out of the operation, care or control of an automobile in the Province is commenced and the defendant by the pleadings alleges that the plaintiff's damage was caused by a party unknown, the plaintiff may make application to add the party unknown as a defendant and Section 187 applies with necessary changes.

(2) This Section does not limit or restrict any right to add or join any person as a party to an action in accordance with the practice of the court in which the action is pending. 1995-96, c. 20, s. 3.

Action for declaratory judgment

191 (1) Where judgment has been obtained against a party unknown, the Facility Association may, at any time, bring action in the Supreme Court of Nova Scotia against any person for a declaratory judgment, declaring that person to

have been, at the time of the accident, the owner or driver of the automobile in respect of the operation, care or control of which the judgment was obtained, and the court may give judgment accordingly.

(2) Where a declaratory judgment is issued pursuant to this Section,

(a) the person declared in the judgment to be the owner or driver is deemed to have been the defendant in the action in which judgment was obtained against the party unknown and the judgment against the party unknown is deemed to be a judgment against such person; and

(b) the Facility Association is deemed to have obtained a judgment against such person for the amount of all money paid by it in respect of the judgment against the party unknown and, accordingly, has all the rights of a judgment creditor, including the right to recover any money that would have been payable in respect of the death or injury under any contract of insurance that was in force at the time of the accident, notwithstanding any Act limiting the time within which an action may be brought.

(3) Where the injury or death arose out of the operation, care or control of the automobile at a time when the automobile was, without the owner's consent, in the possession of some person other than the owner, such action must be disposed of in the same manner as though the identity of the owner had not been established. 1995-96, c. 20, s. 3.

Restriction or power to grant judgment

192 In an action against a party unknown, a judgment against a party unknown may not be granted unless the court in which the action is brought is satisfied that all reasonable efforts have been made by the claiming party to ascertain the identity of the automobile and the owner and the driver of it and that such identity cannot be established. 1995-96, c. 20, s. 3.

Deduction from amount of damages

193 (1) The Facility Association is not required to pay

(a) any amount in respect of a judgment in favour of a person who ordinarily resides outside the Province, unless such person resides in a jurisdiction that provides substantially the same benefits to persons who ordinarily reside in the Province, but not including any amount that would not be payable by the law of the jurisdiction in which such person resides;

(b) more than \$200,000, exclusive of costs, for injury to or the death of one or more persons or damage to property resulting from any one accident occurring on or after July 1, 1996, or more than \$500,000, exclusive of costs, for injury to or the death of one or more persons or damage to property resulting from any one accident occurring on or after April 1, 2004, with payments with respect to damages for damage to property limited to claims for damages in excess of \$250,

but, subject to subsection (2) and the regulations, where

(c) the judgment creditor recovers or is or was entitled to recover, from any source, for or in respect of any injury, death or damage to person or property arising out of the operation, care or control of the automobile by the owner or driver against whom the judgment was obtained, whether or not in the action damages were claimed for or in respect of the injury, death or damage; or

(d) the judgment creditor receives or is or was entitled to receive, from any source, compensation or services or benefits with a pecuniary value for or in respect of the injury, death or damage,

the amount so recovered or received and the amount that the judgment creditor is or was entitled to recover or receive and the amount of compensation and pecuniary value of any services or benefits received or that the judgment creditor is or was entitled to receive must be deducted from the amount of damages included in the judgment and only the amount of damages included in the judgment after such deductions, or the maximum amount payable under clause (b), whichever is less, is required to be paid by the Facility Association.

(2) In computing the amount payable by the Facility Association, no reduction may be made

(a) with respect to any amount recovered or recoverable by the judgment creditor under a contract of life insurance, where the amount is payable in respect of the death of the person;

(b) with respect to any compensation or the pecuniary value of any services or benefits that the judgment creditor received, or is or was entitled to receive under the *Social Assistance Act* or the *Health Services and Insurance Act*;

(c) with respect to

(i) any amount recovered by the judgment creditor, or that the judgment creditor is entitled to recover, from such sources as may be prescribed by the regulations, or

(ii) any amount of compensation, or the pecuniary value of any benefits or services, received by the judgment creditor, or that the judgment creditor is entitled to receive, from such sources as may be prescribed by the regulations or if the compensation, benefits or services are of a kind prescribed by the regulations.

(3) For the purpose of this Section, the question of where a person ordinarily resides must be determined as of the date of the accident as a result of which the damages are claimed. 1995-96, c. 20, s. 3; 2003 (2nd Sess.), c. 1, s. 16.

Costs payable

194 (1) Subject to Section 178, no costs, other than costs taxed on a party and party basis, are required to be paid by the Facility Association.

(2) Where an action has been maintained in part by an insurer and a part only of the amount of the judgment in the action is payable by the Facility Association, the Facility Association shall not pay more than that part of the party

and party costs of the action that bears the same ratio to the whole of such costs as the part of the judgment payable by the Facility Association bears to the total amount of the judgment. 1995-96, c. 20, s. 3.

Applicable practice and procedure

195 The practice and procedure of the Supreme Court of Nova Scotia or the court in which the application or action is brought, including the right of appeal and the practice and procedure relating to appeals, apply to any application or action pursuant to Sections 178 to 197. 1995-96, c. 20, s. 3.

Prohibition against application by Governments

196 No application for the payment of damages may be made to the Facility Association by or on behalf of the Government of Canada, a province of Canada, the United States of America, a state of the United States or any political subdivision, corporation or agency of such Governments. 1995-96, c. 20, s. 3.

Deeming for purposes of Sections 178 to 196

197 For the purpose of Sections 178 to 196, all owners and drivers whose liability results in payment by the Facility Association are deemed to be *sui juris* and all actions taken by the Facility Association in the settlement of claims and actions on their behalf are deemed to be taken upon their instructions and with their full consent. 1995-96, c. 20, s. 3.

Regulations

198 The Governor in Council may make regulations

- (a) generally respecting forms to be used for the purpose of Sections 178 to 197 and prescribing forms required to be prescribed;
- (b) prescribing sources for the purpose of subclause 193(2)(c)(i);
- (c) prescribing, for the purpose of subclause 193(2)(c)(ii), sources of compensation, benefits and services, and kinds of compensation, benefits, and services. 1995-96, c. 20, s. 3.

Medical and other expense coverage

199 (1) Every motor vehicle liability policy must provide

- (a) medical, rehabilitation, loss of income, death and funeral expense benefits; and
- (b) other benefits,

set forth in the regulations made by the Governor in Council, which must be printed in every policy under the heading "Section B - Accident Benefits".

(2) Where an insurer makes a payment under a provision of a contract of insurance referred to in subsection (1), the payment constitutes, to the extent of such payment, a release by the insured person or the insured person's personal representatives of any claim that the insured person or the insured person's personal representatives, or a person claiming through or under the insured person or by virtue of the *Fatal Injuries Act*, may have against the insurer and any other person who may be liable to the insured person or the insured person's personal representatives if that other person is insured under a contract of the same type as is

specified in subsection (1), but nothing in the subsection precludes an insurer from demanding, as a condition precedent to payment, a release to the extent of the payment from the insured person or the insured person's personal representative or any other person. R.S., c. 231, s. 140; 2003 (2nd Sess.), c. 1, s. 17.

Demand for insurance particulars

200 (1) Where a person is injured or killed in an accident in the Province involving an automobile, that person or the person's personal representative may serve

- (a) a demand by registered mail on the owner of the automobile; or
- (b) a demand by registered mail on the insurer of the owner of the automobile,

requiring the owner or insurer, as the case may be, to state in writing to the person making the demand whether or not that owner has insurance of the types mentioned in Section 199 and, where the demand is made under clause (a), requiring the owner, where the owner has such insurance, to state the name of the insurer.

(2) Where the owner or insurer does not, within 10 days after receiving a demand made under subsection (1), comply with the demand the owner or insurer is guilty of an offence. R.S., c. 231, s. 141.

Right of unnamed insured

201 Any person insured by but not named in a contract to which Section 176 or 199 applies may recover under the contract, in the same manner and to the same extent as if named therein as the insured, and for that purpose is deemed to be a party to the contract and to have given consideration therefor. R.S., c. 231, s. 142.

Liability of insurer in first instance

202 (1) Where a person who is entitled to benefits provided by insurance pursuant to Section 199

- (a) is an occupant of a motor vehicle involved in an accident, the insurer of the owner of the motor vehicle is, in the first instance, liable for payment of the benefits provided by the insurance; or
- (b) is not an occupant of a motor vehicle or a railway rolling stock that runs on rails and is struck by a motor vehicle, the insurer of the owner of the motor vehicle is, in the first instance, liable for the payment of the benefits provided by the insurance.

(2) Nothing in this Section affects the operation of subsection 199(2). R.S., c. 231, s. 143.

Payment into court

203 (1) Where an insurer admits liability for insurance money payable under Section 176 or 199 and it appears that

- (a) there are adverse claimants;

(b) the whereabouts of an insured person entitled is unknown; or

(c) there is no person capable of giving and authorized to give a valid discharge therefor, who is willing to do so,

the insurer may, at any time following 30 days after the date upon which the insurance money becomes payable, apply to the Court *ex parte* for an order for payment of the money into court, and the Court may upon such notice, if any, as it thinks necessary make an order accordingly.

(2) The receipt of the proper officer of the Court is sufficient discharge to the insurer for insurance money paid into court and that money must be dealt with as the Court orders. R.S., c. 231, s. 144.

Limitation period

204 Every action or proceeding against an insurer under a contract with respect to insurance provided under Section 176 or 199 must be commenced within the limitation period specified in the contract but, in no event, may this be less than one year after the happening of the accident. R.S., c. 231, s. 145.

Disclosure of insurance particulars

205 (1) Where any person makes a claim for damages in respect of bodily injury or death sustained by the person or any other person while driving or being carried in or upon or entering or getting into or alighting from or as a result of being struck by an automobile, the person shall furnish the person against whom the claim is made with full particulars of all insurance available to the claimant under contracts falling within the scope of Section 199.

(2) Where a claimant is entitled to the benefit of insurance within the scope of Section 199, this, to the extent of payments made or available to the claimant thereunder, constitutes a release by the claimant of any claim against the person liable to the claimant or the insurer of the person liable to the claimant. R.S., c. 231, s. 146.

Terms of insurance permitted

206 Subject to subsection 137(1), an insurer may in a policy

(a) provide insurance that is less extensive in scope than the insurances mentioned in Sections 176 and 199; and

(b) provide the terms of the contract that relate to the insurances mentioned in Sections 176 and 199. R.S., c. 231, s. 147.

OTHER INSURANCE

First loss and excess insurance

207 (1) Subject to Section 165, insurance under a contract evidenced by a valid owner's policy as defined in Section 131 is, in respect to liability arising from or occurring in connection with, the ownership, use or operation of an automobile owned by the insured named in the contract and within the description or definition thereof in the policy, a first loss insurance and insurance attaching under any other valid motor vehicle liability policy is excess insurance only.

(2) In subsection (3), “rateable proportion” means

(a) where there are two insurers liable and each has the same policy limits, the insurers are liable to share equally in any liability, expense, loss or damage;

(b) where there are two insurers liable with different policy limits, the insurers are liable to share equally up to the limit of the smaller policy limit;

(c) where there are more than two insurers liable, clauses (a) and (b) apply with necessary changes.

(3) Subject to Sections 165 and 199 and to subsection (1), where the insured named in a contract has or places any other valid insurance, whether against liability for the ownership, use or operation of, or against loss of, or damage to, an automobile or otherwise, of the insured’s interest in the subject-matter of the contract, or any part thereof, the insurer is liable only for its rateable proportion of any liability or expense or loss or damage.

(4) Notwithstanding subsection (1), the Governor in Council may make regulations

(a) respecting the priority of payment of insurance held by a lessor as defined in Section 211 or by a renter as defined in Section 211 in respect of liability arising from or occurring in connection with the ownership, use or operation of an automobile owned by the lessor or renter;

(b) modifying any provision of this Act to the extent that the Governor in Council considers necessary in order to carry out the purpose and intent of this Section;

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

(5) The exercise by the Governor in Council of the authority contained in subsection (4) is a regulation within the meaning of the *Regulations Act*. R.S., c. 231, s. 148; 2011, c. 35, s. 7.

Interpretation

208 In Sections 209 to 213, “owner” means an owner of a vehicle under the *Motor Vehicle Act*. 2011, c. 35, s. 8.

Right of action for damages caused by negligence

209 Subject to Section 211, nothing in this Act is to be construed to curtail or abridge the right of any person to commence and maintain an action for damages by reason of any injuries to a person or any property resulting from

(a) the negligence of the owner or driver of any motor vehicle; or

(b) the negligence of any agent or employee of the owner of a motor vehicle. 2011, c. 35, s. 8.

Onus of proof

210 (1) In this Section and Sections 211 and 212, “highway” means a highway under the *Motor Vehicle Act*.

(2) Where a person sustains loss or damage by reason of a motor vehicle on a highway, the onus of proof in any civil action that the loss or damage did not entirely or solely arise through the negligence or improper conduct of the owner or the employee or agent of the owner acting in the course of that person’s employment or of the driver of the motor vehicle is on that owner or driver.

(3) Subsection (2) does not apply

(a) in the case of a claim by a passenger without payment against the owner or driver of the motor vehicle in which the passenger was being transported; or

(b) in the case of an accident between motor vehicles on a highway if the claim is made by the owner or driver of any of the motor vehicles involved in the accident or by a passenger in one of the motor vehicles involved in the accident against the owner or driver of another vehicle. 2011, c. 35, s. 8.

Recovery of loss or damage

211 (1) In this Section,

“conditional seller” means a person who, by agreement, in the ordinary course of the person’s business, enters into an agreement with another person for the conditional sale or lease of a vehicle with the right of purchase on performance of the conditions set out in the agreement and with an immediate right of possession vested in the conditional vendee or lessee;

“lender” means a person who holds a security interest in a motor vehicle through a written security agreement, who under that agreement has lent money to a person in respect of the motor vehicle and who is not in possession of the motor vehicle, or a person to whom the lender has assigned the agreement;

“lessor” means a person who, by agreement, in the ordinary course of the person’s business, leases or grants exclusive use of a motor vehicle to another person for a term of more than 30 days or otherwise grants exclusive use of a motor vehicle to another person for a period of more than 30 days, and who is not in possession of the motor vehicle, or a person to whom the lessor has assigned the agreement, but does not include a conditional seller;

“renter” means a person who, by agreement, in the ordinary course of the person’s business, rents a motor vehicle to another person for a term of no more than 30 days and who is not in possession of the motor vehicle, or a person to whom the renter has assigned the agreement;

“security agreement” means a security agreement under the *Personal Property Security Act* or under personal property security legislation of another province of Canada;

“security interest” means a security interest under the *Personal Property Security Act* or under personal property security legislation of another province of Canada;

“seller” means a person who holds a security interest in a motor vehicle through a written security agreement, who sells the motor vehicle to another person under a contract in writing when the purchaser has carried out the terms of the contract and who is not in possession of the motor vehicle, or a person to whom the seller has assigned the security agreement or the contract.

(2) In an action for the recovery of loss or damage sustained by a person by reason of a motor vehicle on a highway, where a person who, at the time that the loss or damage occurred,

(a) was driving the motor vehicle; and

(b) was living with and as a member of the family of the owner of the motor vehicle,

the person is deemed, with respect to that loss or damage,

(c) to be the agent or employee of the owner of the motor vehicle;

(d) to be employed as the agent or employee of the owner of the motor vehicle; and

(e) to be driving the motor vehicle in the course of that person’s employment.

(3) In an action for the recovery of loss or damage sustained by a person by reason of a motor vehicle on a highway, where a person who, at the time that the loss or damage occurred,

(a) was driving the motor vehicle; and

(b) was in possession of the motor vehicle with the consent, expressed or implied, of the owner of the motor vehicle,

the person is deemed, with respect to that loss or damage,

(c) to be the agent or employee of the owner of the motor vehicle;

(d) to be employed as the agent or employee of the owner of the motor vehicle; and

(e) to be driving the motor vehicle in the course of that person’s employment.

(4) Notwithstanding any other provision in this Part, except subsections (8) and (12), in an action for the recovery of loss or damage sustained by a person by reason of a motor vehicle on a highway, the maximum amount for which a lessor or renter of the motor vehicle is liable in respect of the same incident in the person’s capacity as a lessor or renter of the motor vehicle is the amount determined under subsection (7) less any amounts that

(a) are recovered for loss or damage under the third party liability provisions of a contract evidenced by a motor vehicle liability policy issued to a person other than a lessor or renter;

- (b) are in respect of the use or operation of the motor vehicle; and
- (c) are in respect of the same incident.

(5) Notwithstanding any other provision in this Part, except subsections (8) and (12), in an action for the recovery of loss or damage sustained by a person by reason of a motor vehicle on a highway, a person who is a conditional seller, a lender or a seller is not liable in that person's capacity as a conditional seller, a lender or a seller.

(6) Notwithstanding subsections (2) to (5), nothing in this Section relieves any person who is deemed to be the agent or employee of the owner and to be driving the motor vehicle in the course of that person's employment from liability for the loss or damage.

(7) The maximum amount for which a lessor or renter of a motor vehicle is liable for the purpose of subsection (4) is the greatest of

- (a) \$1,000,000;
- (b) the amount of third party liability insurance required by law to be carried in respect of the motor vehicle; and
- (c) the amount established, or determined in the manner prescribed, by regulation.

(8) Subsections (4) and (5) do not apply

- (a) in respect of amounts payable by a conditional seller, lender, lessor, renter or seller other than by reason of vicarious liability imposed by this Section; or
- (b) to conditional sellers, lenders, lessors, renters or sellers or motor vehicles, or classes of conditional sellers, lenders, lessors, renters or sellers or motor vehicles, prescribed by the regulations.

(9) The Governor in Council may make regulations

- (a) establishing amounts payable, or prescribing the manner of determining amounts payable, for the purpose of clause (7)(c);
- (b) prescribing conditional sellers, lenders, lessors, renters and sellers and motor vehicles or classes of conditional sellers, lenders, lessors, renters and sellers and motor vehicles for the purpose of clause (8)(b).

(10) The Governor in Council may make different regulations under clause (9)(b) in relation to conditional sellers, lenders, lessors, renters and sellers and motor vehicles, or classes of conditional sellers, lenders, lessors, renters and sellers and motor vehicles, for different circumstances.

(11) The exercise by the Governor in Council of the authority contained in subsection (9) is a regulation within the meaning of the *Regulations Act*.

(12) Subsections (4) to (9) apply only in relation to loss or damage sustained on or after April 1, 2013. 2011, c. 35, s. 8.

Owner jointly responsible for damage

212 An owner of a motor vehicle who requires or knowingly permits a person who is less than 18 years of age to operate the motor vehicle on a highway and any person in charge of a motor vehicle who provides it to a person who is less than 18 years of age are jointly and severally responsible with the driver for any injury, damage or loss caused by the fault of the driver in the operation of the motor vehicle, unless the owner of the vehicle satisfies the court that the driver was operating the vehicle without the express or implied consent of the owner. 2011, c. 35, s. 8.

Owner not responsible for damage caused by stolen car

213 The owner or person in charge of a motor vehicle is not responsible for any damage caused by the fault of the driver of the vehicle if the owner or person in charge of the motor vehicle proves that the vehicle was operated by or in the charge of a person who had stolen the motor vehicle. 2011, c. 35, s. 8.

SUBROGATION

Subrogation

214 (1) An insurer who makes any payment or assumes liability therefor under a contract is subrogated to all rights of recovery of the insured against any person and may bring action in the name of the insured to enforce those rights.

(2) Where the net amount recovered whether by action or on settlement is, after deduction of the costs of the recovery, not sufficient to provide complete indemnity for the loss or damage suffered, the amount remaining must be divided between the insurer and the insured in the proportion in which the loss or damage has been borne by them.

(3) Where the interest of an insured in any recovery is limited to the amount provided under a clause in the contract to which Section 172 applies, the insurer has control of the action.

(4) Where the interest of an insured in any recovery exceeds that referred to in subsection (3) and the insured and the insurer cannot agree as to

- (a) the solicitors to be instructed to bring the action in the name of the insured;
- (b) the conduct and carriage of the action or any matters pertaining thereto;
- (c) any offer of settlement or the apportionment thereof whether action has been commenced or not;
- (d) the acceptance of any money paid into court or the apportionment thereof;
- (e) the apportionment of costs; or
- (f) the launching or prosecution of an appeal,

either party may apply to the Supreme Court of Nova Scotia for the determination of the matters in question and the Court shall make such order as it considers reasonable having regard to the interests of the insured and the insurer in any recovery in the action or proposed action or in any offer of settlement.

(5) On an application under subsection (4), the only parties entitled to notice and to be heard thereon are the insured and the insurer, and no material or evidence used or taken upon the application is admissible upon the trial of an action brought by or against the insured or the insurer.

(6) A settlement or release given before or after action is brought does not bar the rights of the insured or the insurer, as the case may be, unless they have concurred therein. R.S., c. 231, s. 149.

POLICIES OTHER THAN MOTOR VEHICLE LIABILITY POLICIES

Partial payment of loss

215 A policy, other than a motor vehicle liability policy, may contain a clause to the effect that the insurer in the event of loss shall pay only an agreed portion of any loss that may be sustained or the amount of the loss after deduction of a sum specified in the policy, in either case not exceeding the amount of the insurance, in which case there must be printed upon the face of the policy in conspicuous type, in red ink, the words: "This policy contains a partial payment of loss clause." R.S., c. 231, s. 150.

Adjustment of claim with insured

216 Where a claim is made under any policy other than a motor vehicle liability policy, the insurer shall, notwithstanding any agreement, adjust the amount of the claim with the insured named in the policy as well as with any person having an interest indicated in the policy. R.S., c. 231, s. 151.

RATES AND RATING BUREAUX

Organization of rating bureau

217 Every rating bureau shall forthwith after its adoption file in the office of the Board three certified copies of its constitution, articles of association and bylaws, and a list of members of such bureau and their addresses, and thereafter shall file in the office of the Board every amendment, revision or consolidation of its constitution, articles of association and bylaws, and notice of the admission of new members and the withdrawal of former members within 30 days. R.S., c. 231, s. 152.

Return respecting rates

218 Every rating bureau on behalf of its members and every licensed insurer not belonging to a rating bureau shall make a return under oath to the Board in such form and at such times as it may require showing every or any schedule of rates filed, made or charged, together with such further or other information concerning such rates as the Board considers necessary or desirable. R.S., c. 231, s. 153.

Facility Association

219 The Facility Association is an insurer for the purpose of Sections 220 to 228. 2003 (2nd Sess.), c. 1, s. 18.

Decrease in rates

220 (1) For greater certainty, an insurer not belonging to a rating bureau may, at any time, file with the Board a schedule of rates that decreases the rates that are being charged before the date of the filing.

(2) A filing made under subsection (1) may take effect immediately after filing, but the Board may, on its own motion, review the filing and may require changes or disapprove the filing. 2003 (2nd Sess.), c. 1, s. 18.

Risk-classification system

221 (1) Every insurer shall apply to the Board for approval of any changes to its risk-classification system.

(2) An insurer is not required to apply for approval of a risk-classification system that the insurer is required to use under the regulations.

(3) An insurer shall file with the Board any change to its risk-classification system that is required by the regulations.

(4) The Board may provide interim approval of a risk-classification system and, where so approved, the insurer may use the risk-classification system until such time as the Board revokes the approval or requires changes as a condition of approval.

(5) No insurer shall use a risk-classification system in classifying risks for a coverage or category of automobile insurance unless the risk-classification system is

(a) filed with the Board;

(b) approved by the Board, if approval is required; or

(c) exempt from approval pursuant to this Act. 2003 (2nd Sess.), c. 1, s. 18.

Application of Sections 223 to 225

222 Sections 223 to 225 apply to an application for approval of a risk-classification system. 2003 (2nd Sess.), c. 1, s. 18.

Application for approval of risk-classification system or rates

223 (1) An application for approval of a risk-classification system or rates must be in a form approved by the Board, must be filed together with such information, material and evidence as the Board may require and must be filed in accordance with either Section 224 or 225.

(2) The Board may require an applicant to provide such information, material and evidence as the Board considers necessary in addition to the information, material and evidence required to be provided in or with the application. 2003 (2nd Sess.), c. 1, s. 18.

Approval of risk-classification system or rates

224 (1) An application for approval of a risk-classification system or rates is deemed to have been approved by the Board 60 days after it is filed, unless

the Board, within that period, advises the applicant orally or otherwise that the Board has not approved the application.

(2) The Board may approve the application before the expiry of the 60-day period.

(3) The Board may extend the period for approval for a period not exceeding 60 days.

(4) Where the Board notifies an applicant orally that the Board has not approved an application, the Board shall, within five days, mail a written notice to the applicant confirming that fact.

(5) The Board may not approve the application if a hearing is required by the regulations or if the Board considers that it is in the public interest to hold a hearing on the application. 2003 (2ns Sess.), c. 1, s. 18.

Expedited approval

225 (1) An applicant may apply for expedited approval of rates if the average of the proposed rates for each coverage and category of automobile insurance does not exceed the average of the existing rates filed by that insurer by more than the percentage prescribed by the Board for that class of applicant, coverage or category.

(2) An application for expedited approval is deemed to have been approved 30 days after it is filed, unless the Board, within that period, advises the applicant orally or otherwise that the Board has not approved the application.

(3) For greater certainty, the Board may approve an application for expedited approval before the expiry of the 30-day period.

(4) Where the Board notifies an insurer orally that the Board has not approved the application for expedited approval, the Board shall promptly mail a written notice to the applicant confirming that fact.

(5) Where the Board notifies the insurer that the Board has not approved the application for expedited approval, the insurer may

(a) submit a new application; or

(b) resubmit the same application, in which case Section 224 applies to the application and this Section does not apply. 2003 (2nd Sess.), c. 1, s. 18.

Refusal to approve

226 (1) The Board shall refuse to approve an application if the Board considers that

(a) the proposed risk-classification system or rates are not just and reasonable in the circumstances;

(b) the proposed risk-classification system is not reasonably predictive of risk or does not distinguish fairly among rates;

(c) the proposed rates would impair the solvency of the applicant or are excessive in relation to the financial circumstances of the insurer; or

(d) the proposed rates or rules are in violation of this Act or the regulations.

(2) In deciding on an application, the Board may take into account financial and other information and any other matters that directly or indirectly affect the applicant's proposed rates or the applicant's ability to underwrite insurance using the proposed risk-classification system.

(3) The Board may approve or refuse to approve the application or may vary the risk-classification system or the rates, and the approval may be subject to the conditions or restrictions that the Board considers appropriate in the circumstances. 2003 (2nd Sess.), c. 1, s. 18.

Appeal

227 (1) Where the Board notifies an applicant that the Board has not approved its application, the applicant may, within 15 days after receiving the notification, appeal the decision to the Board.

(2) An appeal under subsection (1) must be in writing.

(3) The appeal must be heard by a panel of the Board of not fewer than three members, none of whom were involved in the decision not to approve the application.

(4) The Board, on the appeal, may approve or refuse to approve the application or may vary the risk-classification system or the rates, and the approval may be subject to the conditions or restrictions that the Board considers appropriate in the circumstances. 2003 (2nd Sess.), c. 1, s. 18.

Costs

228 The Board shall assess the costs to an insurer for a review of an application or a hearing pursuant to Sections 219 to 227 and may include the cost of retaining experts and legal counsel to provide the Board with advice, including testimony, on technical and legal matters. 2003 (2nd Sess.), c. 1, s. 18.

Statistical return

229 (1) Every licensed insurer that carries on in the Province the business of automobile insurance shall prepare and file with such statistical agency as may be designated by the Governor in Council a record of its automobile insurance premiums and of its loss and expense costs in the Province in such form and manner, and according to such system of classification, as the Superintendent may approve.

(2) The Superintendent may require any agency so designated to compile the data so filed in such form as the Superintendent may approve, and the expense of making such compilation shall be apportioned among the insurers whose data is compiled by such agency by the Superintendent who shall certify in writing

the amount due from each insurer and the same shall be payable by the insurer to such agency forthwith.

(3) The Superintendent shall deliver to the Board three copies of the compilation upon receipt thereof from the statistical agency. R.S., c. 231, s. 156.

Adjustment of rates by Board

230 (1) The Board may of its own motion and shall, when so requested by the Minister, examine into and concerning the rates for all or any class or classes of automobile insurance in or in any part of the Province.

(2) It is the duty of the Board after due notice in a daily newspaper published with broad circulation in the Province and after a hearing to order an adjustment of the rates for automobile insurance whenever it finds such rates to be excessive, inadequate, unfairly discriminatory or otherwise unreasonable.

(3) A rate charged by an insurer in any area for any classification of risk may not be presumed to be excessive for the sole reason that a lower rate is charged by a competing insurer in the same area and for a similar classification of risk.

(4) Any order made under this Section must state the reasons for the finding of the Board.

(5) A rating bureau, a licensed insurer or the Superintendent may appeal any order of the Board on questions of fact or law to the Nova Scotia Court of Appeal.

(6) No order made takes effect for a period of 10 days after its date.

(7) The Superintendent must be served with notice of any hearing and the Superintendent and any rating bureau, licensed insurer or other person are entitled to be heard either personally or by counsel.

(8) Any rating bureau, licensed insurer or other person failing to comply with any provision of the order of the Board is guilty of an offence.

(9) The Board may fix fees to recover the direct and indirect costs incurred by the Board in conducting an examination, including a hearing, pursuant to this Section.

(10) The fees referred to in subsection (9)

(a) must be paid to the Board by the licensed automobile insurers whose rates are the subject of an examination, including a hearing, pursuant to this Section in such proportions as the Board determines; and

(b) may include the cost of retaining experts and legal counsel to provide the Board with advice, including testimony, on technical and legal matters. R.S., c. 231, s. 157; 2002, c. 5, s. 32; 2003 (2nd Sess.), c. 1, s. 19.

Access to records

231 (1) The Board, or any person authorized in writing by the Board, shall have access to such

(a) books, records, securities or documents of a rating bureau or licensed insurer as are related to the schedules of rates of the rating bureau or licensed insurer;

(b) books, records, securities or documents of a rating bureau or licensed insurer as are related to the underwriting rules and principles or rate-classification systems of the rating bureau or licensed insurer; and

(c) information related to return on investment, profit, retained earnings, expenses, commissions paid, executive compensation and such other matters as are related to the solvency and financial circumstances of the rating bureau or licensed insurer.

(2) Any officer or person in charge, possession, custody or control of the books, records, securities, documents or information referred to in subsection (1) who refuses access to the books, records, securities, documents or information is guilty of an offence. 2003 (2nd Sess.), c. 1, s. 20.

Regulations

232 (1) The Governor in Council may make regulations

(a) adding to or increasing medical, rehabilitation, loss of income, death and funeral expense benefits and other benefits that are required to be in contracts;

(b) defining the minimum levels of medical, rehabilitation, loss of income, death and funeral expense benefits and other benefits that insurers must offer to insureds as optional supplements to the benefits required to be in contracts;

(c) determining that exclusions or limitations in any part of the general provisions, definitions, mandatory conditions or benefits required to be included in a contract do not apply to a "person insured in Quebec" as defined by the regulations;

(d) prescribing mandatory conditions that must be included in every contract;

(e) prescribing risk-classification factors that must be used by insurers;

(f) prescribing risk-classification factors that may not be used by insurers;

(g) prescribing the circumstances under which the Board must hold hearings before approving an application;

(h) prescribing matters that may not be considered in rates, rules or risk-classification systems;

(i) prescribing optional endorsements, coverages or riders that an insurer must offer to provide to insureds on an optional basis;

- (j) prescribing endorsements, coverages or riders that an insurer may offer to provide to insureds on an optional basis;
- (k) prescribing guidelines that are binding on the Board;
- (l) establishing or governing a system or process for the examination, assessment and treatment or rehabilitation of bodily injuries suffered by an insured as a result of an accident as defined in Section 148 in respect of which benefits are payable under Section 199;
- (m) governing the payment of any fees, levies or other assessments in respect of a system or process established under clause (l), including respecting
 - (i) the amount of the fees, levies or other assessments or the manner in which and by whom any of those amounts are to be determined, and
 - (ii) to whom and by whom the fees, levies or other assessments are to be paid;
- (n) prescribing activities or failures to act for the purpose of Section 234;
- (o) prescribing such additional matters related to the conduct of insurers as will tend to improve their service and assist insureds.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*, 2003 (2nd Sess.), c. 1, s. 20; 2010, c. 18, s. 6.

Insurer not to refuse to insure, renew or continue or to terminate insurance

233 (1) An insurer shall not refuse to issue, refuse to renew or terminate a contract of automobile insurance or refuse to provide or continue any coverage or endorsement in respect of a contract of automobile insurance on any ground set out in the regulations made pursuant to subsection (2).

- (2) The Governor in Council may make regulations
- (a) requiring an insurer or broker to supply to applicants for automobile insurance, named insureds under contracts for automobile insurance or any other person prescribed by the regulations such information, including but not restricted to underwriting rules, as the regulations specify;
 - (b) prescribing grounds for which an insurer cannot, in circumstances specified by the regulations, refuse to issue, refuse to renew or terminate a contract of automobile insurance or refuse to provide or continue any coverage or endorsement in respect of a contract of automobile insurance;
 - (c) requiring insurers to provide to applicants for automobile insurance, named insureds under contracts for automobile insurance or any other person prescribed by the regulations reasons in any case of refusal to issue, refusal to renew or termination of a contract of automobile insurance or in any case of change to classification of risk;

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

(3) The exercise by the Governor in Council of the authority contained in subsection (2) is a regulation within the meaning of the *Regulations Act*, 2003, c. 11, s. 3.

WITHDRAWAL OF INSURANCE COMPANIES

Restriction on withdrawal

234 (1) For the purpose of this Section, an insurer is withdrawing from the business of automobile insurance in the Province if the insurer does anything that results or is likely to result in a significant reduction in the amount of gross premiums written by the insurer for automobile insurance in any part of the Province, including any of the following things that have or are likely to have that result:

(a) declining to issue, terminating, refusing to renew or refusing to process applications for contracts of automobile insurance;

(b) refusing to provide or continue coverage or endorsements in respect of contracts of automobile insurance;

(c) taking actions that directly or indirectly result in termination of contracts between the insurer and the agents and brokers who solicit or negotiate contracts of automobile insurance on behalf of the insurer;

(d) reducing the ability of the agents or brokers to solicit or negotiate contracts of automobile insurance on behalf of the insurer;

(e) reducing the insurer's ability to act as a servicing carrier or ceasing to act as a servicing carrier under the Plan of Operation of the Facility Association;

(f) taking actions that directly or indirectly result in the termination of any contract between the insurer and the Facility Association; or

(g) engaging in any activity or failure to act that is prescribed by the regulations.

(2) An insurer shall not withdraw from the business of automobile insurance except in accordance with this Section.

(3) An insurer that intends to withdraw from the business of automobile insurance shall file with the Superintendent a notice in the form provided by the Superintendent.

(4) The notice must specify the date that the insurer intends to begin to withdraw from the business of automobile insurance and must be filed at least 180 days before that date.

(5) The Superintendent may require the insurer to provide such information, material and evidence as the Superintendent considers necessary in addition to the information, material and evidence required to be provided in the notice.

(6) The insurer may withdraw from the business of automobile insurance on or after the date specified in the notice under subsection (4).

(7) Notwithstanding subsection (6), the Superintendent may

(a) authorize the insurer to withdraw from the business of automobile insurance before the date specified in the notice under subsection (4); or

(b) prohibit the insurer from withdrawing from the business of automobile insurance until a date specified by the Superintendent that is not later than 90 days after the date specified in the notice under subsection (4). 2003 (2nd Sess.), c. 1, s. 21.

Review of this Part

235 (1) The Superintendent shall review this Part, or cause this Part to be reviewed,

(a) on or before April 1, 2020; and

(b) at least every seven years thereafter,

or sooner or more often at the request of the Minister.

(2) The Superintendent shall deliver in writing to the Minister the results of the review, including any recommendations for change that the Superintendent considers appropriate as a result of the review. 2011, c. 35, s. 9.

PART VIII

FIRE INSURANCE

Interpretation of Part

236 In this Part,

“contract” means a contract of insurance against loss of or damage to property in the Province or in transit therefrom or thereto, caused by fire, lightning or explosion;

“mutual insurance” means a contract of insurance in which the consideration is not fixed or certain at the time the contract is made and is to be determined at the termination of the contract or at fixed periods during the term of the contract according to the experience of the insurer in respect of all similar contracts whether or not the maximum amount of the consideration is predetermined. R.S., c. 231, s. 160.

Application of Part

237 (1) This Part applies to insurance against loss of or damage to property arising from the peril of fire in any contract made in the Province except

(a) insurance falling within the classes of aircraft, automobile, boiler and machinery, inland transportation, marine, plate glass, sprinkler leakage and theft insurance;

(b) if the subject-matter of the insurance is rents, charges or loss of profits;

(c) if the peril of fire is an incidental peril to the coverage provided; or

(d) if the subject-matter of the insurance is property that is insured by an insurer or group of insurers primarily as a nuclear risk under a policy covering against loss of or damage to the property resulting from nuclear reaction or nuclear radiation and from other perils.

(2) This Part applies to contracts made on or after January 1, 1959, and Chapter 100 of the Revised Statutes, 1954, as that Chapter was in force on December 31, 1958, applies to contracts made before January 1, 1959.

(3) Notwithstanding subsection (1), this Part applies to insurance of an automobile as provided in subsection 241(2). R.S., c. 231, s. 161; 1998, c. 8, s. 48.

Other perils

238 (1) Every insurer licensed pursuant to Section 5 to carry on fire insurance may, subject to its Act of incorporation, insure or reinsure any property in which the insured has an insurable interest against loss or damage by fire, lightning or explosion and may insure or reinsure the same property against loss or damage from falling aircraft, earthquake, windstorm, tornado, hail, sprinkler leakage, riot, malicious damage, weather, water damage, smoke damage, civil commotion and impact by vehicles and any one or more perils falling within such other classes of insurance as are prescribed by the regulations.

(2) An insurer licensed pursuant to Section 5 to carry on fire insurance may insure an automobile against loss or damage under a policy falling within the scope of this Part, but in the case of a purely mutual fire insurance corporation, licensed pursuant to Section 5 to carry on fire insurance in the Province and carrying on business on the premium-note plan, the automobile must be specifically insured under a policy separate from that insuring other property. R.S., c. 231, s. 162.

Extent of coverage

239 (1) Subject to subsection (4) and to clause 247(a), in any contract to which this Part applies, the contract is deemed to cover the insured property

(a) against fire, whether resulting from explosion or otherwise, not occasioned by or happening through

(i) in the case of goods, their undergoing any process involving the application of heat, and

(ii) riot, civil commotion, war, invasion, act of foreign enemy, hostilities, whether war be declared or not, civil war, rebellion, revolution, insurrection or military power;

(b) against lightning, but excluding destruction or loss to electrical devices or appliances caused by lightning or other electrical

currents unless fire originates outside the article itself and only for such destruction or damage as occurs from such fire; and

(c) against explosion, not occasioned by, or happening through, any of the perils specified in subclause (a)(ii), of natural, coal or manufactured gas in a building not forming part of a gas works, whether fire ensues therefrom or not.

(2) Unless a contract to which this Part applies otherwise specifically provides, it does not cover the insured property against loss or damage caused by contamination by radioactive material directly or indirectly resulting from fire, lightning or explosion, within the meaning of subsection (1).

(3) Where property insured under a contract covering at a specified location is necessarily removed to prevent loss or damage or further loss or damage thereto, that part of the insurance under the contract that exceeds the amount of the insurer's liability for any loss incurred covers, for seven days only or for the unexpired term of the contract if less than seven days, the property removed and any property remaining in the original location in the proportions that the value of the property in each of the respective locations bears to the value of the property in them all.

(4) Nothing in subsection (1) precludes an insurer giving more extended insurance against the perils mentioned therein, but in that case this Part does not apply to the extended insurance.

(5) An insurer licensed pursuant to Section 5 to carry on fire insurance may include in its insurance contracts a clause or endorsement providing that, in the case of livestock insured against death or injury caused by fire or lightning, "lightning" is deemed to include other electrical currents. R.S., c. 231, s. 163.

Contents of policy

240 Every policy must contain the name of the insurer, the name of the insured, the name of the person or persons to whom the insurance money is payable, the premium for the insurance, the subject-matter of the insurance, the indemnity for which the insurer may become liable, the event on the happening of which the liability is to accrue and the term of the insurance. R.S., c. 231, s. 164.

Variance between application and policy

241 After an application for insurance is made, where it is in writing, any policy sent to the insured is deemed to be intended to be in accordance with the terms of the application, unless the insurer points out in writing the particulars wherein it differs from the application, in which case the insured may, within two weeks from the receipt of the notification, reject the policy. R.S., c. 231, s. 165.

Renewal of contract

242 A contract may be renewed by the delivery of a renewal receipt identifying the policy by a number, date, or otherwise, or a new premium note. R.S., c. 231, s. 166.

Statutory conditions

243 (1) In this Section, “policy” does not include interim receipts or binders.

(2) The conditions set forth in the Schedule to this Part are deemed to be part of every contract and must be printed on every policy with the heading “Statutory Conditions” and no variation or omission of or addition to any statutory condition is binding on the insured. R.S., c. 231, s. 167.

Notice of cancellation or alteration

244 (1) Where the loss, if any, under a contract has, with the consent of the insurer, been made payable to a person other than the insured, the insurer may not cancel or alter the policy to the prejudice of that person without notice to the person.

(2) The length of and manner of giving the notice under subsection (1) is the same as notice of cancellation to the insured under the statutory conditions in the contract. R.S., c. 231, s. 168.

Contribution among insurers

245 (1) Where, on the happening of any loss or damage to property insured, there is in force more than one contract covering the same interest, the insurers under the respective contracts are each liable to the insured for its rateable proportion of the loss unless it is otherwise expressly agreed in writing between the insurers.

(2) For the purpose of subsection (1), a contract is deemed to be in force notwithstanding any term thereof that the policy does not cover, come into force, attach or become insurance with respect to the property until after full or partial payment of any loss under any other policy.

(3) Nothing in subsection (1) affects the validity of any divisions of the sum insured into separate items, or any limits of insurance on specified property, or any clause referred to in Section 246 or any contract condition limiting or prohibiting the having or placing of other insurance.

(4) Nothing in subsection (1) affects the operation of any deductible clause and

(a) where one contract contains a deductible, the pro rata proportion of the insurer under that contract must be first ascertained without regard to the clause and then the clause must be applied only to affect the amount of recovery under that contract; and

(b) where more than one contract contains a deductible, the pro rata proportion of the insurers under those contracts must be first ascertained without regard to the deductible clauses and then the highest deductible must be pro rated among the insurers with deductibles and these pro rated amounts affect the amount of recovery under those contracts.

(5) Nothing in subsection (4) is to be construed to have the effect of increasing the pro rata contribution of an insurer under a contract that is not subject to a deductible clause.

(6) Notwithstanding subsection (1), insurance on identified articles is a first loss insurance as against all other insurance. R.S., c. 231, s. 169.

Notice of limit of liability

246 A contract containing

- (a) a deductible clause;
- (b) a co-insurance, average or similar clause; or
- (c) a clause limiting recovery by the insured to a specified percentage of the value of any property insured at the time of loss, whether or not that clause is conditional or unconditional,

must have printed or stamped upon its face in red ink or in bold print of not less than 12-point size the words: "This policy contains a clause that may limit the amount payable", and unless these words are so printed or stamped the clause is not binding upon the insured. R.S., c. 231, s. 170; 1998, c. 8, s. 49.

Relief granted by court

247 Where a contract

- (a) excludes any loss that would otherwise fall within the coverage prescribed by Section 239; or
- (b) contains any stipulation, condition or warranty that is or may be material to the risk, including a provision in respect to the use, condition, location or maintenance of the insured property,

the exclusion, stipulation, condition or warranty is not binding upon the insured if it is held to be unjust or unreasonable by the court before which a question relating thereto is tried. R.S., c. 231, s. 171.

Subrogation

248 (1) The insurer, upon making any payment or assuming liability therefor under a contract of fire insurance, is subrogated to all rights of recovery of the insured against any person, and may bring action in the name of the insured to enforce such rights.

(2) Where the net amount recovered after deducting the costs of recovery is not sufficient to provide a complete indemnity for the loss or damage suffered, that amount must be divided between the insurer and the insured in the proportions in which the loss or damage has been borne by them respectively. R.S., c. 231, s. 172.

SCHEDULE TO PART VIII

STATUTORY CONDITIONS

¹ *Misrepresentation* - Where any person applying for insurance falsely describes the property to the prejudice of the insurer, or misrepresents or fraudulently omits

to communicate any circumstance that is material to be made known to the insurer in order to enable it to judge of the risk to be undertaken, the contract is void as to any property in relation to which the misrepresentation or omission is material.

2 *Property of others* - Unless otherwise specifically stated in the contract, the insurer is not liable for loss or damage to property owned by any person other than the insured, unless the interest of the insured therein is stated in the contract.

3 *Change of interest* -The insurer is liable for loss or damage occurring after an authorized assignment under the *Bankruptcy Act* (Canada) or change of title by succession, by operation of law or by death.

4 *Material change* - Any change material to the risk and within the control and knowledge of the insured avoids the contract as to the part affected thereby, unless the change is promptly notified in writing to the insurer or its local agent; and the insurer when so notified may return the unearned portion, if any, of the premium paid and cancel the contract, or may notify the insured in writing that, where the insured desires the contract to continue in force, the insured shall, within 15 days of the receipt of the notice, pay to the insurer an additional premium; and in default of such payment the contract is no longer in force and the insurer shall return the unearned portion, if any, of the premium paid.

5 (1) *Termination of insurance* - This contract may be terminated,
 (a) by the insurer giving to the insured 15 days' notice of termination by registered mail, or five days' written notice of termination personally delivered;

(b) by the insured at any time on request.

(2) Where this contract is terminated by the insurer

(a) the insurer shall refund the excess of premium actually paid by the insured over the pro rata premium for the expired time, but, in no event, may the pro rata premium for the expired time be deemed to be less than any minimum retained premium specified; and

(b) the refund must accompany the notice unless the premium is subject to adjustment or determination as to amount, in which case the refund must be made as soon as practicable.

(3) Where this contract is terminated by the insured, the insurer shall refund as soon as practicable the excess of premium actually paid by the insured over the short rate premium for the expired time, but, in no event, may the short rate premium for the expired time be deemed to be less than any minimum retained premium specified.

(4) The refund may be made by money, postal or express company money order, or by cheque payable at par.

(5) The 15 days mentioned in clause (1)(a) of this condition commences to run on the day following the receipt of the registered letter at the post office to which it is addressed.

6 (1) *Requirements after loss* - Upon the occurrence of any loss of or damage to the insured property, the insured shall, where such loss or damage is covered by the contract, in addition to observing the requirements of conditions 9, 10 and 11,

(a) forthwith give notice thereof in writing to the insurer;

(b) deliver as soon as practicable to the insurer a proof of loss verified by a statutory declaration,

(i) giving a complete inventory of the destroyed and damaged property and showing in detail quantities, costs, actual cash value and particulars of amount of loss claimed,

(ii) stating when and how the loss occurred, and where caused by fire or explosion due to ignition, how the fire or explosion originated, so far as the insured knows or believes,

(iii) stating that the loss did not occur through any wilful act or neglect or the procurement, means or connivance of the insured,

(iv) showing the amount of other insurances and the names of other insurers,

(v) showing the interest of the insured and of all others in the property with particulars of all liens, encumbrances and other charges upon the property,

(vi) showing any changes in title, use, occupation, location, possession or exposures of the property since the issue of the contract,

(vii) showing the place where the property insured was at the time of loss;

(c) where required, give a complete inventory of undamaged property and showing in detail quantities, cost, actual cash value;

(d) where required and where practicable, produce books of account, warehouse receipts and stock lists, and furnish invoices and other vouchers verified by statutory declaration, and furnish a copy of the written portion of any other contract.

(2) The evidence furnished under clauses (1)(c) and (d) of this condition is not considered proofs of loss within the meaning of conditions 12 and 13.

7 *Fraud* - Any fraud or wilfully false statement in a statutory declaration in relation to any of the above particulars vitiates the claim of the person making the declaration.

8 *Who may give notice and proof* - Notice of loss may be given, and proof of loss may be made, by the agent of the insured named in the contract in case of absence or inability of the insured to give the notice or make the proof, and absence or inability being satisfactorily accounted for, or in the like case, or if the insured refuses to do so, by a person to whom any part of the insurance money is payable.

9 (1) *Salvage* - The insured, in the event of any loss or damage to any property insured under the contract, shall take all reasonable steps to prevent further damage to any such property so damaged and to prevent damage to other property insured hereunder including, if necessary, its removal to prevent damage or further damage thereto.

(2) The insurer shall contribute pro rata towards any reasonable and proper expenses in connection with steps taken by the insured and required under subparagraph (1) of this condition according to the respective interests of the parties.

10 *Entry, control, abandonment* - After any loss or damage to insured property, the insurer has an immediate right of access and entry by accredited agents sufficient to enable them to survey and examine the property, and to make an estimate of the loss or damage, and, after the insured has secured the property, a further right of access and entry sufficient to enable the insurer to make appraisal or particular estimate of the loss or damage, but the

insurer is not entitled to the control or possession of the insured property, and without the consent of the insurer there can be no abandonment to it of insured property.

11 *Appraisal* - In the event of disagreement as to the value of the property insured, the property saved or the amount of the loss, those questions must be determined by appraisal as provided under the Insurance Act before there can be any recovery under this contract whether the right to recover on the contract is disputed or not, and independently of all other questions. There is no right to an appraisal until a specific demand therefor is made in writing and until after proof of loss has been delivered.

12 *When loss payable* - The loss is payable within 60 days after completion of the proof of loss, unless the contract provides for a shorter period.

13 (1) *Replacement* - The insurer, instead of making payment, may repair, rebuild, or replace the property damaged or lost, giving written notice of its intention so to do within 30 days after receipt of the proofs of loss.

(2) In that event the insurer shall commence to so repair, rebuild or replace the property within 45 days after receipt of the proofs of loss, and shall thereafter proceed with all due diligence to the completion thereof.

14 *Action* - Every action or proceeding against the insurer for the recovery of any claim under or by virtue of this contract is absolutely barred unless commenced within one year next after the loss or damage occurs.

15 *Notice* - Any written notice to the insurer may be delivered at, or sent by registered mail to, the chief agency or head office of the insurer in this Province. Written notice may be given to the insured named in this contract by letter personally delivered to the insured or by registered mail addressed to the insured at the insured's latest post office address notified to the insurer. In this condition "registered" means registered in or outside Canada.

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

PART IX

LIFE INSURANCE

Interpretation of Part

248 In this Part,

"application" means an application for insurance or for the reinstatement of insurance;

"beneficiary" means a person, other than the insured or the insured's personal representative, to whom or for whose benefit insurance money is made payable in a contract or by a declaration;

"child" includes an adopted child;

"contract" means a contract of life insurance;

"Court" means the Supreme Court of Nova Scotia or a judge thereof;

"creditor's group insurance" means insurance effected by a creditor in respect of the lives of the creditor's debtors whereby the lives of the debtors are insured severally under a single contract;

“declaration” means an instrument signed by the insured

- (a) with respect to which an endorsement is made on the policy;
- (b) that identifies the contract; or
- (c) that describes the insurance or insurance fund or a part thereof,

in which the insured designates, or alters or revokes the designation of, the insured’s personal representative or a beneficiary as one to whom or for whose benefit insurance money is to be payable;

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

“grandchild” includes the child of an adopted child;

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

“group-life insured” means a person whose life is insured by a contract of group insurance but does not include a person whose life is insured under the contract as a person dependent upon, or related to, the person;

“industrial contract” means a contract for an amount not exceeding \$2,000, exclusive of any benefit, surplus, profit, dividend or bonus also payable under the contract, and that provides for payment of premiums at fortnightly or shorter intervals, or, where the premiums are usually collected at the home of the insured, at monthly intervals;

“instrument” includes a will;

“insurance” means life insurance;

“insured” means

- (a) except as provided in clause (b), the person who makes a contract with an insurer; and
- (b) in the case of group insurance, the group-life insured in the provisions relating to the designation of beneficiaries or other persons to receive insurance money or relating to the rights and status of beneficiaries;

“person” includes a firm, partnership, corporation and unincorporated society or association. R.S., c. 231, s. 173.

APPLICATION OF PART

Application of Part

250 (1) Notwithstanding any agreement, condition or stipulation to the contrary, this Part applies to a contract made in the Province on or after July 1, 1962, and, subject to subsections (2) and (3), applies to a contract made in the Province before that day.

(2) The rights and interests of a beneficiary for value under a contract that was in force immediately prior to July 1, 1962, are those provided in Chapter 151 of the Revised Statutes, 1954, then in force.

(3) Where the person who would have been entitled to the payment of insurance money if the money had become payable immediately prior to July 1, 1962, was a preferred beneficiary within the meaning of Chapter 151 of the Revised Statutes, 1954, then in force, the insured may not, except in accordance with that Chapter,

- (a) alter or revoke the designation of a beneficiary; or
- (b) assign, exercise rights under or in respect of, surrender or otherwise deal with, the contract,

but this subsection does not apply after a time at which the insurance money, if it were then payable, would be payable wholly to a person other than a preferred beneficiary within the meaning of that Chapter. R.S., c. 231, s. 174.

Application to group insurance

251 In the case of a contract of group insurance made with an insurer licensed pursuant to Section 5 to carry on the business of insurance in the Province at the time the contract was made, this Part applies in determining

- (a) the rights and status of beneficiaries if the group-life insured was resident in the Province at the time the group-life insured became insured; and
- (b) the rights and obligations of the group-life insured if the group-life insured was resident in the Province at the time the group-life insured became insured. R.S., c. 231, s. 175.

ISSUANCE OF POLICY AND CONTENTS THEREOF

Contract of insurance

- 252 (1) An insurer entering into a contract shall issue a policy.
- (2) Subject to subsection (3), the provisions in
- (a) the application;
 - (b) the policy;
 - (c) any document attached to the policy when issued; and
 - (d) any amendment to the contract agreed upon in writing after the policy is issued,

constitute the entire contract.

(3) In the case of a contract made by a fraternal society, the policy, the Act or instrument of incorporation of the society, its constitution, by-laws and rules, and the amendments made from time to time to any of them, the application for the contract and the medical statement of the applicant constitute the entire contract.

(4) An insurer shall, upon request, furnish to the insured or to a claimant under the contract a copy of the application. R.S., c. 231, s. 176.

Contents of policy

- 253** (1) This Section does not apply to a contract
- (a) of group insurance;
 - (b) of creditor's group insurance; or
 - (c) made by a fraternal society.
- (2) An insurer shall set forth in the policy
- (a) the name or a sufficient description of the insured and of the person whose life is insured;
 - (b) the amount, or the method of determining the amount, of the insurance money payable, and the conditions under which it becomes payable;
 - (c) the amount, or the method of determining the amount, of the premium and the period of grace, if any, within which it may be paid;
 - (d) whether the contract provides for participation in a distribution of surplus or profits that may be declared by the insurer;
 - (e) the conditions upon which the contract may be reinstated if it lapses; and
 - (f) the options, if any,
 - (i) of surrendering the contract for cash,
 - (ii) of obtaining a loan or an advance payment of the insurance money, and
 - (iii) of obtaining paid-up or extended insurance.
- R.S., c. 231, s. 177.

Contents of group policy

- 254** In the case of a contract of group insurance or of creditor's group insurance, an insurer shall set forth in the policy
- (a) the name or a sufficient description of the insured;
 - (b) the method of determining the persons whose lives are insured;
 - (c) the amount, or the method of determining the amount, of the insurance money payable, and the conditions under which it becomes payable;
 - (d) the period of grace, if any, within which the premium may be paid; and
 - (e) whether the contract provides for participation in a distribution of surplus or profits that may be declared by the insurer. R.S., c. 231, s. 178.

Contents of group certificate

255 In the case of a contract of group insurance, an insurer shall issue, for delivery by the insured to each group-life insured, a certificate or other document in which are set forth

- (a) the name of the insurer and an identification of the contract;
- (b) the amount, or the method of determining the amount, of insurance on the group-life insured and on any person whose life is insured under the contract as a person dependent upon, or related to, the group-life insured; and
- (c) the circumstances in which the insurance terminates and the rights, if any, upon termination, of the group-life insured and of any person whose life is insured under the contract as a person dependent upon, or related to, the group-life insured. R.S., c. 231, s. 179.

CONDITIONS GOVERNING FORMATION OF CONTRACT**Insurable interest**

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

- (2) A contract is not void for lack of insurable interest if
 - (a) it is a contract of group insurance; or
 - (b) the person whose life is insured has consented in writing to the insurance being placed on the person's life.

(3) Where the person whose life is insured is under the age of 16 years, consent to insurance being placed on the person's life may be given by one of the person's parents or by a person standing *in loco parentis* to the person. R.S., c. 231, s. 180.

"insurable interest" defined

257 Without restricting the meaning of "insurable interest", a person has an insurable interest in the person's own life and in the life of

- (a) the person's child or grandchild;
- (b) the person's spouse or common-law partner;
- (c) any person upon whom the person is wholly or in part dependent for, or from whom the person is receiving, support or education;
- (d) the person's employee; and
- (e) any person in the duration of whose life the person has a pecuniary interest. R.S., c. 231, s. 181; 2000, c. 29, s. 24.

Contract taking effect

258 (1) Subject to any provision to the contrary in the application or the policy, a contract does not take effect unless

- (a) the policy is delivered to an insured, the insured's assign or agent, or to a beneficiary;

(b) payment of the first premium is made to the insurer or its authorized agent; and

(c) no change has taken place in the insurability of the life to be insured between the time the application was completed and the time the policy was delivered.

(2) Where a policy is issued on the terms applied for and is delivered to an agent of the insurer for unconditional delivery to a person referred to in clause (1)(a), it is deemed, but not to the prejudice of the insured, to have been delivered to the insured. R.S., c. 231, s. 182.

Deemed results respecting payments

259 (1) Where a cheque or other bill of exchange, or a promissory note or other written promise to pay, is given for the whole or part of a premium and payment is not made according to its tenor, the premium or part thereof is deemed not to have been paid.

(2) Where a remittance for or on account of a premium is sent in a registered letter to an insurer and is received by it, the remittance is deemed to have been received at the time of the registration of the letter. R.S., c. 231, s. 183.

Payment of premium

260 (1) Except in the case of group insurance, an assignee of a contract, a beneficiary or a person acting on behalf of one of them or of the insured may pay any premium that the insured is entitled to pay.

(2) Where a premium, other than the initial premium, is not paid at the time it is due, the premium may be paid within a period of grace of

(a) 30 days, or in the case of an industrial contract 28 days, from and excluding the day on which the premium is due; or

(b) the number of days, if any, specified in the contract for payment of an overdue premium,

whichever is the longer period.

(3) Where the happening of the event upon which the insurance money becomes payable occurs during the period of grace and before the overdue premium is paid, the contract is deemed to be in effect as if the premium had been paid at the time it was due, but the amount of the premium, together with interest at the rate specified in the contract, but not exceeding six per cent per year, and the balance, if any, of the current year's premium, may be deducted from the insurance money. R.S., c. 231, s. 184.

Duty to disclose

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

(2) Subject to Section 262, a failure to disclose, or a misrepresentation of, such a fact renders the contract voidable by the insurer. R.S., c. 231, s. 185.

Contract not voidable

262 (1) This Section does not apply to a misstatement of age or to disability insurance.

(2) Subject to subsection (3), where a contract has been in effect for two years during the lifetime of the person whose life is insured, a failure to disclose, or a misrepresentation of, a fact required to be disclosed by Section 261 does not, in the absence of fraud, render the contract voidable.

(3) In the case of a contract of group insurance, a failure to disclose, or a misrepresentation of, such a fact in respect of a person whose life is insured under the contract does not render the contract voidable, but if evidence of insurability is specifically requested by the insurer the insurance in respect of that person is voidable by the insurer unless it has been in effect for two years during the lifetime of that person in which event it is not, in the absence of fraud, voidable. R.S., c. 231, s. 186.

Non-disclosure by insurer

263 Where an insurer fails to disclose, or misrepresents, a fact material to the insurance, the contract is voidable by the insured, but in the absence of fraud the contract is not by reason of such failure or misrepresentation voidable after the contract has been in effect for two years. R.S., c. 231, s. 187.

Misstatement of age and insurable age

264 (1) This Section does not apply to a contract of group insurance or of creditor's group insurance.

(2) Subject to subsection (3), where the age of a person whose life is insured is misstated to the insurer, the insurance money provided by the contract must be increased or decreased to the amount that would have been provided for the same premium at the correct age.

(3) Where a contract limits the insurable age, and the correct age of the person whose life is insured at the date of the application exceeds the age so limited, the contract is, during the lifetime of that person but not later than five years from the date the contract takes effect, voidable by the insurer within 60 days after it discovers the error. R.S., c. 231, s. 188.

Misstatement in group insurance

265 In the case of a contract of group insurance or of creditor's group insurance, a misstatement to the insurer of the age of a person whose life is insured does not of itself render the contract voidable and the provisions, if any, of the contract with respect to age or misstatement of age apply. R.S., c. 231, s. 189.

Suicide

266 (1) Where a contract contains an undertaking, express or implied, that insurance money will be paid if a person whose life is insured commits suicide, the undertaking is lawful and enforceable.

(2) Where a contract provides that in case a person whose life is insured commits suicide within a certain period of time the contract is void or the amount payable under it is reduced, and the contract lapses and is subsequently reinstated on one or more occasions, the period of time commences to run from the date of the latest reinstatement. R.S., c. 231, s. 190.

Reinstatement

267 (1) This Section does not apply to a contract of group insurance or to a contract made by a fraternal society.

(2) Where a contract lapses and the insured within two years applies for reinstatement of the contract, and within that time the insured

(a) pays the overdue premiums and other indebtedness under the contract to the insurer, together with interest at the rate specified in the contract, but not exceeding six per cent per year, compounded annually; and

(b) produces

(i) evidence satisfactory to the insurer of the good health, and

(ii) other evidence satisfactory to the insurer of the insurability,

of the person whose life was insured,

the insurer shall reinstate the contract.

(3) Subsection (2) does not apply if the cash surrender value has been paid or an option of taking paid-up or extended insurance has been exercised.

(4) Sections 261 and 262 apply with necessary changes to reinstatement of a contract. R.S., c. 231, s. 191.

DESIGNATION OF BENEFICIARIES**Designation of beneficiary**

268 (1) An insured may, in a contract or by a declaration, designate the insured, the insured's personal representative or a beneficiary to receive insurance money.

(2) Subject to Section 269, the insured may alter or revoke the designation by a declaration.

(3) A designation in favour of "heirs", "next of kin" or "estate", or the use of words of like import in a designation, is deemed to be a designation of a personal representative. R.S., c. 231, s. 192.

Irrevocable designation

269 (1) An insured may, in a contract or by a declaration, other than a declaration that is part of a will, filed with the insurer at its head or principal office in Canada during the lifetime of the person whose life is insured, designate a beneficiary irrevocably and in that event

(a) the insured, while the beneficiary is living, may not alter or revoke the designation without the consent of the beneficiary; and

(b) the insurance money is not subject to the control of the insured or of the insured's creditors and does not form part of the insured's estate.

(2) Where the insured purports to designate a beneficiary irrevocably in a will or in a declaration that is not filed as provided in subsection (1), the designation has the same effect as if the insured had not purported to make it irrevocable.

(3) No insurer shall issue a policy containing an irrevocable designation of a beneficiary or accept for filing a declaration containing an irrevocable designation of a beneficiary unless there are attached to the policy or to the declaration statements signed by

(a) the insured in the following form:

I understand that the effect of my designating a beneficiary irrevocably is that, under the provisions of the *Insurance Act*, while the beneficiary is living, I may not alter or revoke the designation without the consent of the beneficiary and I may not assign, exercise rights under or in respect of, surrender or otherwise deal with the contract without the consent of the beneficiary;

and

(b) an agent of the insurer in the following form:

I certify that I have fully explained to the insured the nature and effect of making an irrevocable designation of beneficiary and such explanation was given to the insured not in the presence of the beneficiary and that the insured indicated that the insured was aware of the irrevocable nature of the designation so made by the insured.

R.S., c. 231, s. 193.

Designation in will

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

(2) Notwithstanding the *Wills Act*, a designation in a will is of no effect against a designation made later than the making of the will.

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

(4) Where a designation is contained in an instrument that purports to be a will, and subsequently the instrument, if valid as a will, would be revoked by operation of law or otherwise, the designation is thereby revoked. R.S., c. 231, s. 194.

Trustee for beneficiary

271 (1) An insured may, in a contract or by a declaration, appoint a trustee for a beneficiary and may alter or revoke the appointment by a declaration.

(2) A payment made by an insurer to the trustee discharges the insurer to the extent of the payment. R.S., c. 231, s. 195.

Beneficiary predeceasing life insured

272 (1) Where a beneficiary predeceases the person whose life is insured, and no disposition of the share of the deceased beneficiary in the insurance money is provided in the contract or by a declaration, the share is payable to

- (a) the surviving beneficiary;
- (b) where there is more than one surviving beneficiary, the surviving beneficiaries in equal shares; or
- (c) where there is no surviving beneficiary, the insured or the insured's personal representative.

(2) Where two or more beneficiaries are designated otherwise than alternatively, but no division of the insurance money is made, the insurance money is payable to them in equal shares. R.S., c. 231, s. 196.

Right to enforce contract

273 A beneficiary may enforce for the beneficiary's own benefit, and a trustee appointed pursuant to Section 271 may enforce as trustee, the payment of insurance money made payable to the beneficiary or trustee in the contract or by a declaration and in accordance with the provisions thereof, but the insurer may set up any defence that it could have set up against the insured or the insured's personal representative. R.S., c. 231, s. 197.

Exemption from execution and seizure

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

(2) While a designation in favour of a spouse or common-law partner, child, grandchild or parent of a person whose life is insured, or any of them, is in effect, the rights and interests of the insured in the insurance money and in the contract are exempt from execution or seizure. R.S., c. 231, s. 198; 2000, c. 29, s. 24.

DEALINGS WITH CONTRACT
DURING LIFETIME OF INSURED

Insured dealing with contract

275 Where a beneficiary

- (a) is not designated irrevocably; or
- (b) is designated irrevocably but has attained the age of 19 years and consents,

the insured may assign, exercise rights under or in respect of, surrender or otherwise deal with, the contract as provided therein or in this Part or as may be agreed upon with the insurer. R.S., c. 231, s. 199.

Entitlement to dividend and bonus

276 (1) Notwithstanding the designation of a beneficiary irrevocably, the insured is entitled while living to the dividends or bonuses declared on a contract, unless the contract otherwise provides.

(2) Unless the insured otherwise directs, the insurer may apply the dividends or bonuses declared on the contract for the purpose of keeping the contract in force. R.S., c. 231, s. 200.

Transfer of interest of insured

277 (1) Notwithstanding the *Wills Act*, where in a contract or in an agreement in writing between an insurer and an insured it is provided that a person named in the contract or in the agreement has, upon the death of the insured, the rights and interests of the insured in the contract,

(a) the rights and interests of the insured in the contract do not, upon the death of the insured, form part of the insured's estate; and

(b) upon the death of the insured, the person named in the contract or in the agreement has the rights and interests given to the insured by the contract and by this Part and is deemed to be the insured.

(2) Where the contract or agreement provides that, upon the death of the insured, two or more persons named in the contract or in the agreement have successively on the death of each of them, the rights and interests of the insured in the contract, this Section applies successively, with necessary changes, to each of such persons and to the person's rights and interests in the contract.

(3) Notwithstanding any nomination made pursuant to this Section, the insured may, prior to the insured's death, assign, exercise rights under or in respect of, surrender or otherwise deal with, the contract as if the nomination had not been made, and may alter or revoke the nomination by agreement in writing with the insurer. R.S., c. 231, s. 201.

Assignment of contract

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

- (a) any assignee other than one who gave notice earlier in like manner; and
- (b) a beneficiary other than one designated irrevocably as provided in Section 269 prior to the time the assignee gave notice to the insurer of the assignment in the manner prescribed in this subsection.

(2) Where a contract is assigned as security, the rights of a beneficiary under the contract are affected only to the extent necessary to give effect to the rights and interests of the assignee.

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

(4) A provision in a contract to the effect that the rights or interests of the insured, or in the case of group insurance the group-life insured, are not assignable is valid. R.S., c. 231, s. 202.

Enforcement by group-life insured

279 A group-life insured may in the group-life insured's own name enforce a right given to the group-life insured under a contract, subject to any defence available to the insurer against the group-life insured or against the insured. R.S., c. 231, s. 203.

Limit on payments into life insurance contracts

280 (1) In this Section,

“actuarial basis” means the assumptions and methods generally accepted and used by fellows of the Canadian Institute of Actuaries to establish the cost of insurance;

“side account” means an account associated with or a part of a contract that is intended to hold amounts in excess of the maximum amount permitted to be held in a contract that is exempt from accrual taxation pursuant to the *Income Tax Act* (Canada).

(2) Subject to any lesser limit provided under the terms of a contract,

(a) with respect to a contract that is exempt from accrual taxation pursuant to the *Income Tax Act* (Canada), the amount that may be held in a side account may not exceed the sum of

- (i) the amount required to pay future costs of insurance, related premium taxes and administrative fees or charges, and

(ii) the additional amount, if any, that could in the future be held in the contract on an accrual tax exempt basis under the *Income Tax Act* (Canada); and

(b) with respect to a contract that is not exempt from accrual taxation pursuant to the *Income Tax Act* (Canada), the amount that may be held in a contract together with any associated side account may not exceed the amount required to pay future costs of insurance, related premium taxes and administrative fees or charges.

(3) The amounts referred to in clauses (2)(a) and (b) are as determined from time to time by the insurer on an actuarial basis using the remaining lifetime of the persons then insured under the contract.

(4) Any amount that exceeds the limits set out in subsection (2)

- (a) is not a premium;
- (b) is deemed to have never been a premium; and
- (c) cannot be held in a contract or its associated side account regardless of the date of issue of the contract.

(5) Where an amount exceeds the limits set out in subsection (2), the insurer shall refund the amount, including any gain or interest, to the person or persons who paid the amount.

(6) This Section does not apply to an annuity. 2020, c. 12, s. 2.

MINORS

Capacity of minor

281 Except in respect of the minor's rights as beneficiary, a minor who has attained the age of 16 years has the capacity of a person of the age of 19 years

- (a) to make an enforceable contract; and
- (b) in respect of a contract. R.S., c. 231, s. 204.

Capacity of minor beneficiary

282 A beneficiary who has attained the age of 18 years has the capacity of a person of the age of 19 years to receive insurance money payable to the beneficiary and to give a discharge therefor. R.S., c. 231, s. 205.

PROCEEDINGS UNDER CONTRACT

Matters to be proved

- 283** Where an insurer receives sufficient evidence of
- (a) the happening of the event upon which insurance money becomes payable;
 - (b) the age of the person whose life is insured;
 - (c) the right of the claimant to receive payment; and
 - (d) the name and age of the beneficiary, if there is a beneficiary,

it shall, within 30 days after receiving the evidence, pay the insurance money to the person entitled thereto. R.S., c. 231, s. 206.

Payment

284 (1) Subject to subsection (4), insurance money is payable in the Province.

(2) Unless a contract otherwise provides, a reference therein to dollars means Canadian dollars.

(3) Where a person entitled to receive insurance money is not domiciled in the Province, the insurer may pay the insurance money to that person or to any other person who is entitled to receive it on the person's behalf by the law of the domicile of the payee.

(4) In the case of a contract of group insurance, the insurance money is payable in the province of Canada in which the group-life insured was resident at the time the group-life insured became insured. R.S., c. 231, s. 207.

Action in Province

285 Regardless of the place where a contract was made, a claimant who is a resident of the Province may bring action in a Court if the insurer was authorized to carry on insurance in the Province at the time the contract was made or at the time the action is brought. R.S., c. 231, s. 208.

Limitation of action

286 (1) Subject to subsection (2), an action or proceeding against an insurer for the recovery of insurance money may not be commenced more than one year after the furnishing of the evidence required by Section 283, or more than six years after the happening of the event upon which the insurance money becomes payable, whichever period first expires.

(2) Where a declaration has been made under Section 289, an action or proceeding to which reference is made in subsection (1) may not be commenced more than one year after the date of the declaration. R.S., c. 231, s. 209.

Instrument or order respecting payment

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

(2) Subsection (1) does not affect the rights or interests of any person other than the insurer. R.S., c. 231, s. 210.

Sufficiency of proof

288 Where an insurer admits the validity of the insurance but not the sufficiency of the evidence required by Section 283 and there is no other question in issue except a question under Section 289, the insurer or the claimant may, before or

after action is brought and upon at least 30 days notice, apply to the Court for a declaration as to the sufficiency of the evidence furnished, and the Court may make the declaration or may direct what further evidence must be furnished and on the furnishing thereof may make the declaration or, in special circumstances, may dispense with further evidence. R.S., c. 231, s. 211.

Presumption of death

289 Where a claimant alleges that the person whose life is insured should be presumed to be dead by reason of the person not having been heard of for seven years, and there is no other question in issue except a question under Section 288, the insurer or the claimant may, before or after action is brought and upon at least 30 days notice, apply to the Court for a declaration as to presumption of the death and the Court may make the declaration. R.S., c. 231, s. 212.

Court may make order

290 (1) Upon making a declaration under Section 288 or 289, the Court may make such order respecting the payment of the insurance money as it deems just and, subject to Section 292, an order made under this subsection is binding upon the applicant and upon all persons to whom notice of the application has been given.

(2) The Court may fix without taxation the costs incurred in connection with an order made under subsection (1).

(3) A payment made under an order made under subsection (1) discharges the insurer to the extent of the amount paid. R.S., c. 231, s. 213.

Application stays proceeding

291 Unless the Court otherwise orders, an application made under Section 288 or 289 operates as a stay of any pending action with respect to the insurance money. R.S., c. 231, s. 214.

Appeal

292 An appeal lies to the Nova Scotia Court of Appeal from any declaration, direction or order made under Section 288 or 289 or subsection 290(1). R.S., c. 231, s. 215.

Powers of Court

293 Where the Court finds that the evidence furnished under Section 283 is not sufficient or that a presumption of death is not established, it may order that the matters in issue be decided in an action brought or to be brought, or may make such other order as it considers just respecting further evidence to be furnished by the claimant, publication of advertisements, further inquiry or any other matter or respecting costs. R.S., c. 231, s. 216.

Payment into court

294 Where an insurer admits liability for insurance money and it appears to the insurer that

- (a) there are adverse claimants;

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

the insurer may, at any time after 30 days from the date of the happening of the event upon which the insurance money becomes payable, apply to the Court *ex parte* for an order for payment of the money into court, and the Court may upon such notice, if any, as it thinks necessary make an order accordingly. R.S., c. 231, s. 217.

Simultaneous deaths

295 Unless a contract or a declaration otherwise provides, where the person whose life is insured and a beneficiary die at the same time or in circumstances rendering it uncertain which of them survived the other, the insurance money is payable in accordance with subsection 272(1) as if the beneficiary had predeceased the person whose life is insured. R.S., c. 231, s. 218.

Insurance money payable in instalments

296 (1) Subject to subsections (2) and (3), where insurance money is payable in instalments and a contract, or an instrument signed by the insured and delivered to the insurer, provides that a beneficiary has not the right to commute the instalments or to alienate or assign the beneficiary's interest therein, the insurer shall not, unless the insured subsequently directs otherwise in writing, commute the instalments or pay them to any person other than the beneficiary, and the instalments are not, in the hands of the insurer, subject to any legal process except an action to recover the value of necessaries supplied to the beneficiary or the beneficiary's minor children.

(2) A Court may, upon the application of the beneficiary and upon at least 10 days notice, declare that in view of special circumstances

- (a) the insurer may, with the consent of the beneficiary, commute instalments of insurance money; or
- (b) the beneficiary may alienate or assign the beneficiary's interest in the insurance money.

(3) After the death of the beneficiary, subsection (1) does not apply.

(4) In this Section, "instalments" includes insurance money held by the insurer under Section 297. R.S., c. 231, s. 219.

Insurer holding insurance money

297 (1) An insurer may hold insurance money

- (a) subject to the order of an insured or a beneficiary; or
- (b) upon trusts or other agreements for the benefit of the insured or the beneficiary,

as provided in the contract, by an agreement in writing to which it is a party, or by a declaration, with interest at a rate agreed upon therein or, where no rate is agreed upon, at the rate declared from time to time by the insurer in respect of insurance money so held by it.

(2) The insurer is not bound to hold insurance money as provided in subsection (1) under the terms of a declaration to which it has not agreed in writing. R.S., c. 231, s. 220.

Application for payment into court

298 Where an insurer does not, within 30 days after receipt of the evidence required by Section 283, pay the insurance money to some person competent to receive it or into court, the Court may, upon application of any person, order that the insurance money or any part thereof be paid into court, or may make such other order as to the distribution of the money as it considers just, and payment made in accordance with the order discharges the insurer to the extent of the amount paid. R.S., c. 231, s. 221.

Costs

299 The Court may fix without taxation the costs incurred in connection with an application or order made under Section 294 or 298, and may order them to be paid out of the insurance money or by the insurer or the applicant or otherwise as it considers just. R.S., c. 231, s. 222.

Payment into court for minor

300 (1) Where an insurer admits liability for insurance money payable to a minor and there is no person capable of giving and authorized to give a discharge therefor, who is willing to do so, the insurer may, at any time after 30 days from the date of the happening of the event upon which the insurance money becomes payable, pay the money, less the applicable costs mentioned in subsection (2), into court to the credit of the minor.

(2) The insurer may retain out of the insurance money for costs incurred upon payment into court under subsection (1) the sum of \$10 if the amount does not exceed \$1,000, and the sum of \$15 in other cases, and payment of the remainder of the money into court discharges the insurer.

(3) No order is necessary for payment into court under subsection (1), but the prothonotary or other proper officer shall receive the money upon the insurer filing with the prothonotary or officer an affidavit showing the amount payable and the name, date of birth and residence of the minor, and upon such payment being made the insurer shall forthwith notify the Minister of Community Services and deliver to that Minister a copy of the affidavit. R.S., c. 231, s. 223.

Beneficiary under disability

301 Where it appears that a representative of a beneficiary who is under disability may, under the law of the domicile of the beneficiary, accept payments on behalf of the beneficiary, the insurer may make payment to the representative and any such payment discharges the insurer to the extent of the amount paid. R.S., c. 231, s. 224.

MISCELLANEOUS PROVISIONS

Presumption against agency

302 No officer, agent or employee of an insurer and no person soliciting insurance, whether or not the person is an agent of the insurer is, to the prejudice of

the insured, a beneficiary or a claimant, deemed to be the agent of the insured in respect of any question arising out of a contract. R.S., c. 231, s. 225.

Insurer giving misinformation

303 An insurer does not incur any liability for any default, error or omission in giving or withholding information as to any notice or instrument that it has received and that affects the insurance money. R.S., c. 231, s. 226.

Prohibition on trading of life insurance or benefits

304 (1) Any person, other than an insurer or its authorized agent, who advertises or purports to be a purchaser of insurance or of benefits under insurance or who deals or trades in insurance for the purpose of procuring the sale, surrender, transfer, assignment, pledge or hypothecation of insurance to the person or any other person is guilty of an offence.

(2) Subsection (1) does not apply to a person or class of person authorized by the regulations to advertise or purport to be a purchaser of insurance or of benefits under insurance.

(3) Any sale, surrender, transfer, assignment, pledge or hypothecation of insurance that would result in an offence under subsection (1) is void. 2020, c. 12, s. 3

PART X

MARINE INSURANCE

Interpretation

305 In this Part,

“action” includes counterclaim and set-off;

“freight” includes the profit derivable by a ship owner from the employment of the ship owner’s ship to carry the ship owner’s own goods or movables, as well as freight payable by a third party, but does not include passage money;

“movables” means any movable tangible property, other than the ship, and includes money, valuable securities and other documents;

“policy” means marine policy;

“policy of insurance” includes every writing whereby any contract of marine insurance is made or agreed to be made, or is evidenced, and “insurance” includes assurance. R.S., c. 231, s. 227.

Contract of marine insurance

306 A contract of marine insurance is a contract whereby the insurer undertakes to indemnify the assured in the manner and to the extent thereby agreed and includes any insurance, and reinsurance, made upon any ship or vessel or upon the machinery, tackle or furniture of any ship or vessel, or upon any goods, merchandise or property of any description whatever on board of any ship or vessel, or upon the freight of, or any other interest that may be lawfully insured in or relating to any ship or vessel, and includes any insurance of goods, merchandise or property

for any transit that includes not only a sea or marine risk, but also any other risk incidental to the transit insured from the commencement of the transit to the ultimate destination covered by the insurance. R.S., c. 231, s. 228.

Mixed land and sea risks

307 (1) A contract of marine insurance may, by its express terms or by usage of trade, be extended so as to protect the assured against losses on inland waters or on any land risk that may be incidental to any sea voyage.

(2) Where a ship in course of building, or the launch of a ship, or any adventure analogous to a marine adventure, is covered by a policy in the form of a marine policy, this Part, in so far as applicable, applies thereto but, except as by this Section provided, nothing in this Part alters or affects any rule of law applicable to any contract of insurance other than a contract of marine insurance as by this Part defined. R.S., c. 231, s. 229.

Marine adventure insurance permitted

308 (1) In this Section, “maritime perils” means the perils consequent on or incidental to the navigation of the sea, that is to say, perils of the seas, fire, war perils, pirates, rovers, thieves, captures, seizures, restraints, and detainments of princes and peoples, jettisons, barratry, and any other perils, either of the like kind or which may be designated by the policy.

(2) Subject to this Part, every lawful marine adventure may be the subject of a contract of marine insurance.

(3) In particular, there is a marine adventure if

(a) any ship, goods or other movables are exposed to maritime perils, such property being in this Part referred to as “insurable property”;

(b) the earning or acquisition of any freight, passage money, commission, profit or other pecuniary benefit, or the security for any advances, loan or disbursements, is endangered by the exposure of insurable property to maritime perils;

(c) any liability to a third party may be incurred by the owner of, or other person interested in or responsible for, insurable property by reason of maritime perils. R.S., c. 231, s. 230.

INSURABLE INTEREST

Gaming or wagering contract

309 (1) Every contract of marine insurance by way of gaming or wagering is void.

(2) A contract of marine insurance is deemed to be a gaming or wagering contract if

(a) the assured does not have an insurable interest as defined by this Part, and the contract is entered into with no expectation of acquiring such an interest; or

(b) the policy is made “interest or no interest”, “without further proof of interest than the policy itself” or “without benefit of salvage to the insurer”, or subject to any other like term,

but, where there is no possibility of salvage, a policy may be effected without benefit of salvage to the insurer. R.S., c. 231, s. 231.

Insurable interest

310 (1) Subject to this Part, every person has an insurable interest who is interested in a marine adventure.

(2) In particular, a person is interested in a marine adventure if the person stands in any legal or equitable relation to the adventure or to any insurable property at risk therein, in consequence of which the person may benefit by the safety or due arrival of insurable property, may be prejudiced by its loss or by damage thereto or by the detention thereof or may incur liability in respect thereof. R.S., c. 231, s. 232.

When interest must attach

311 (1) The assured must be interested in the subject-matter insured at the time of the loss though the assured need not be interested when the insurance is effected but, where the subject-matter is insured “lost or not lost”, the assured may recover although the assured may not have acquired an interest until after the loss, unless at the time of effecting the contract of insurance the assured was aware of the loss and the insurer was not.

(2) Where the assured has no interest at the time of the loss, the assured cannot acquire interest by any act or election after the assured is aware of the loss. R.S., c. 231, s. 233.

Defeasible or contingent interest

312 (1) A defeasible interest is insurable, as also is a contingent interest.

(2) In particular, where the buyer of goods has insured them, the buyer has an insurable interest, notwithstanding that the buyer might, at the buyer’s election, have rejected the goods, or have treated them as at the seller’s risk, by reason of the latter’s delay in making delivery or otherwise. R.S., c. 231, s. 234.

Partial interest

313 A partial interest of any nature is insurable. R.S., c. 231, s. 235.

Reinsurance

314 (1) The insurer under a contract of marine insurance has an insurable interest in the insurer’s risk and may reinsure in respect of it.

(2) Unless the policy otherwise provides, the original assured has no right or interest in respect of such reinsurance. R.S., c. 231, s. 236.

Bottomry or respondentia

315 The lender of money on bottomry or *respondentia* has an insurable interest in respect of the loan. R.S., c. 231, s. 237.

Wages

316 The master or any member of the crew of a ship has an insurable interest in respect of the master's or crew member's wages. R.S., c. 231, s. 238.

Advance freight

317 In the case of advance freight, the person advancing the freight has an insurable interest, in so far as such freight is not repayment in case of loss. R.S., c. 231, s. 239.

Charges of insurance

318 The assured has an insurable interest in the charges of any insurance that the assured may effect. R.S., c. 231, s. 240.

Mortgage

319 (1) Where the subject-matter insured is mortgaged, the mortgagor has an insurable interest in the full value thereof, and the mortgagee has an insurable interest in respect of any sum due or to become due under the mortgage.

(2) A mortgagee, consignee or other person having an interest in the subject-matter insured may insure on behalf and for the benefit of other persons interested as well as for the mortgagee's, consignee's or other person's own benefit.

(3) The owner of insurable property has an insurable interest in respect of the full value thereof, notwithstanding that some third person may have agreed, or be liable, to indemnify the owner in case of loss. R.S., c. 231, s. 241.

Assignment of interest

320 Where the assured assigns or otherwise parts with the assured's interest in the subject-matter insured, the assured does not thereby transfer to the assignee the assured's rights under the contract of insurance, unless there is an express or implied agreement with the assignee to that effect, but this Section does not affect a transmission of interest by operation of law. R.S., c. 231, s. 242.

INSURABLE VALUE

Measure of insurable value

321 Subject to any express provision or valuation in the policy, the insurable value of the subject-matter insured must be ascertained as follows:

- (a) in insurance on a ship, the insurable value is the value at the commencement of the risk, of the ship, including the ship's outfit, provisions and stores for the officers and crew, money advanced for the crew's wages, and other disbursements, if any, incurred to make the ship fit for the voyage or adventure contemplated by the policy, plus the charges of insurance upon the whole;

(b) the insurable value, in the case of a steamship includes also the machinery, boilers and coals, oils and engine stores if owned by the assured, and, in the case of a ship engaged in a special trade, the ordinary fittings requisite for that trade;

(c) in insurance on freight, whether paid in advance or otherwise, the insurable value is the gross amount of the freight at the risk of the assured, plus the charges of insurance;

(d) in insurance on goods or merchandise, the insurable value is the prime cost of the property insured, plus the expenses of and incidental to shipping and the charges of insurance upon the whole;

(e) in insurance on any other subject-matter, the insurable value is the amount at the risk of the assured when the policy attaches, plus the charges of insurance. R.S., c. 231, s. 243.

DISCLOSURE AND REPRESENTATIONS

Good faith

322 A contract of marine insurance is a contract based upon the utmost good faith and, where the utmost good faith is not observed by one party, the contract may be avoided by the other party. R.S., c. 231, s. 244.

Disclosure by insured

323 (1) Subject to this Section, the assured must disclose to the insurer before the contract is concluded every material circumstance that is known to the assured, and the assured is deemed to know every circumstance that in the ordinary course of business ought to be known by the assured and, where the assured fails to make such disclosure, the insurer may avoid the contract.

(2) Every circumstance is material that would influence the judgement of a prudent insurer in fixing the premium or determining whether the insurer will take the risk.

(3) In the absence of inquiry the following circumstances need not be disclosed, namely:

(a) any circumstance that diminishes the risk;

(b) any circumstance that is known or presumed to be known to the insurer;

(c) any circumstance as to which information is waived by the insurer;

(d) any circumstance that it is superfluous to disclose by reason of any express or implied warranty.

(4) Whether any particular circumstance that is not disclosed be material or not is in each case a question of fact.

(5) "circumstance" includes any communication made to or information received by the assured.

(6) For the purpose of clause (3)(b), an insurer is presumed to know matters of common notoriety or knowledge and matters that an insurer in the ordinary course of the insurer's business, as such, ought to know. R.S., c. 231, s. 245.

Disclosure by agent

324 Subject to Section 323 as to circumstances that need not be disclosed, where an insurance is effected for the assured by an agent, the agent shall disclose to the insurer

(a) every material circumstance that is known to the agent, and an agent to insure is deemed to know every circumstance that in the ordinary course of business ought to be known by or to have been communicated to the agent; and

(b) every material circumstance that the assured is bound to disclose, unless it comes to the assured's knowledge too late to communicate it to the agent. R.S., c. 231, s. 246.

Untrue representation by agent

325 (1) Every material representation made by the assured or by the assured's agent to the insurer during the negotiations for the contract, and before the contract is concluded, must be true and, where it is untrue, the insurer may avoid the contract.

(2) A representation is material that would influence the judgment of a prudent insurer in fixing the premium or determining whether the insurer will take the risk.

(3) A representation may be either a representation as to a matter of fact or as to a matter of expectation or belief.

(4) A representation as to a matter of fact is true if it is substantially correct, that is to say, if the difference between what is represented and what is actually correct would not be considered material by a prudent insurer.

(5) A representation as to a matter of expectation or belief is true if it is made in good faith.

(6) A representation may be withdrawn or corrected before the contract is concluded.

(7) Whether a particular representation is material or not is in each case a question of fact. R.S., c. 231, s. 247.

When contract concluded

326 A contract of marine insurance is deemed to be concluded when the proposal of the assured is accepted by the insurer, whether the policy is then issued or not, and, for the purpose of showing when the proposal was accepted, reference may be made to the slip or covering note or other customary memorandum of the contract. R.S., c. 231, s. 248.

THE POLICY

Contract of marine insurance

327 (1) A contract of marine insurance is inadmissible in evidence unless it is embodied in a marine policy in accordance with this Part.

(2) The policy may be executed and issued either at the time when the contract is concluded or afterwards. R.S., c. 231, s. 249.

Contents of policy

328 A marine policy must specify

- (a) the name of the assured or of some person who effects the insurance on the assured's behalf;
- (b) the subject-matter insured and the risk insured against;
- (c) the voyage or period of time, or both, as the case may be, covered by the insurance;
- (d) the sum or sums insured; and
- (e) the name or names of the insurers. R.S., c. 231, s. 250.

Signature of insurer

329 (1) A marine policy must be signed by or on behalf of the insurer, but, in the case of a corporation, the corporate seal may be sufficient and nothing in this Section is to be construed as requiring the subscription of a corporation to be under seal.

(2) Where a policy is subscribed by or on behalf of two or more insurers, each subscription, unless the contrary is expressed, constitutes a distinct contract with the assured. R.S., c. 231, s. 251.

“voyage” and “time” policies

330 (1) Where the contract is to insure the subject-matter at and from, or from one place to another or others, the policy is called a “voyage policy” and, where the contract is to insure the subject-matter for a definite period of time, the policy is called a “time policy”.

(2) A contract for both voyage and time may be included in the same policy. R.S., c. 231, s. 252.

Subject-matter

331 (1) The subject-matter insured must be designated in a marine policy with reasonable certainty.

(2) The nature and extent of the interest of the assured in the subject-matter insured need not be specified in the policy.

(3) Where the policy designates the subject-matter insured in general terms, it is to be construed to apply to the interest intended by the assured to be covered.

(4) In the application of this Section, regard must be had to any usage regulating the designation of the subject-matter insured. R.S., c. 231, s. 253.

Types of policy and valued policy

332 (1) A policy may be either valued or unvalued.

(2) A valued policy is a policy that specifies the agreed value of the subject-matter insured.

(3) Subject to this Part, and in the absence of fraud, the value fixed by the policy is, as between the insurer and assured, conclusive of the insurable value of the subject intended to be insured, whether the loss is total or partial.

(4) Unless the policy otherwise provides, the value fixed by the policy is not conclusive for the purpose of determining whether there has been a constructive total loss. R.S., c. 231, s. 254.

Unvalued policy

333 An unvalued policy is a policy that does not specify the value of the subject-matter insured, but, subject to the limit of the sum insured, leaves the insurable value to be subsequently ascertained in the manner hereinbefore specified. R.S., c. 231, s. 255.

Floating policy

334 (1) A floating policy is a policy that describes the insurance in general terms and leaves the name of the ship or ships and other particulars to be defined by subsequent declaration.

(2) The subsequent declaration or declarations may be made by endorsement on the policy or in other customary manner.

(3) Unless the policy otherwise provides, the declarations must be made in the order of dispatch or shipment and they must, in the case of goods, comprise all consignments within the terms of the policy, and the value of the goods or other property must be honestly stated, but an omission or erroneous declaration may be rectified even after loss or arrival, provided the omission or declaration was made in good faith.

(4) Unless the policy otherwise provides, where a declaration of value is not made until after notice of loss or arrival, the policy must be treated as an unvalued policy as regards the subject-matter of that declaration. R.S., c. 231, s. 256.

Form of policy

335 (1) A policy may be in the form in the Schedule to this Part.

(2) Subject to this Part, and unless the context of the policy otherwise requires, the terms and expressions mentioned in the Schedule to this Part is to be construed as having the scope and meaning in the Schedule assigned to them. R.S., c. 231, s. 257.

Premium arranged

336 (1) Where an insurance is effected at a premium to be arranged, and no arrangement is made, a reasonable premium is payable.

(2) Where an insurance is effected on the terms that an additional premium is to be arranged in a given event, and that event happens but no arrangement is made, then a reasonable additional premium is payable. R.S., c. 231, s. 258.

DOUBLE INSURANCE

Double insurance

337 (1) Where two or more policies are effected by or on behalf of the assured on the same adventure and interest or any part thereof, and the sums insured exceed the indemnity allowed by this Part, the assured is said to be overinsured by double insurance.

(2) Where the assured is overinsured by double insurance,

(a) the assured, unless the policy otherwise provides, may claim payment from the insurers in such order as the assured may think fit, provided that the assured is not entitled to receive any sum in excess of the indemnity allowed by this Part;

(b) where the policy under which the assured claims is a valued policy, the assured must give credit as against the valuation for any sum received by the assured under any other policy without regard to the actual value of the subject-matter insured;

(c) where the policy under which the assured claims is an unvalued policy, the assured must give credit, as against the full insurable value, for any sum received by the assured under any other policy;

(d) where the assured receives any sum in excess of the indemnity allowed by this Part, the assured is deemed to hold such sum in trust for the insurers according to their right of contribution among themselves. R.S., c. 231, s. 259.

WARRANTIES, ETC.

Warranty

338 (1) A warranty, in the following Sections relating to warranties, means a promissory warranty, that is to say, a warranty by which the assured undertakes that some particular thing must or must not be done, or that some condition must be fulfilled, or whereby the assured affirms or negatives the existence of a particular state of facts.

(2) A warranty may be express or implied.

(3) A warranty, as defined above, is a condition that must be exactly complied with, whether it is material to the risk or not and, where it is not so complied with, then, subject to any express provision in the policy, the insurer is discharged from liability as from the date of the breach of warranty, but without prejudice to any liability incurred by the insurer before that date. R.S., c. 231, s. 260.

Non-compliance

339 (1) Non-compliance with a warranty is excused when, by reason of a change of circumstances, the warranty ceases to be applicable to the circumstances of the contract, or when compliance with the warranty is rendered unlawful by any subsequent law.

(2) Where a warranty is broken, the assured cannot assert the defence that the breach has been remedied and the warranty complied with before loss.

(3) A breach of warranty may be waived by the insurer. R.S., c. 231, s. 261.

Express warranty

340 (1) An express warranty may be in any form of words from which the intention to warrant is to be inferred.

(2) An express warranty must be included in or written upon the policy, or must be contained in some document incorporated by reference into the policy.

(3) An express warranty does not exclude an implied warranty, unless it is inconsistent therewith. R.S., c. 231, s. 262.

“neutral” property or ship

341 (1) Where insurable property, whether ship or goods, is expressly warranted “neutral”, there is an implied condition that the property has a neutral character at the commencement of the risk and that, so far as the assured can control the matter, its neutral character must be preserved during the risk.

(2) Where a ship is expressly warranted “neutral,” there is also an implied condition that, so far as the assured can control the matter, the ship must be properly documented, that is to say, that the ship must carry the necessary papers to establish the ship’s neutrality and that the ship must not falsify or suppress the ship’s papers or use simulated papers, and, where any loss occurs through breach of this condition, the insurer may avoid the contract. R.S., c. 231, s. 263.

Nationality of ship

342 There is no implied warranty as to the nationality of a ship, or that the ship’s nationality may not be changed during the risk. R.S., c. 231, s. 264.

Warranty of “well” or “in good safety”

343 Where the subject-matter insured is warranted “well” or “in good safety” on a particular day, it is sufficient if it is safe at any time during that day. R.S., c. 231, s. 265.

Warranty respecting seaworthiness, ordinary perils or preparation

344 (1) In a voyage policy there is an implied warranty that at the commencement of the voyage the ship is seaworthy for the purpose of the particular adventure insured.

(2) Where the policy attaches while the ship is in port, there is also an implied warranty that the ship is, at the commencement of the risk, reasonably fit to encounter the ordinary perils of the port.

(3) Where the policy relates to a voyage that is performed in different stages, during which the ship requires different kinds of or further preparation or equipment, there is an implied warranty that at the commencement of each stage the ship is seaworthy in respect of such preparation or equipment for the purposes of that stage.

(4) A ship is deemed to be seaworthy when the ship is reasonably fit in all respects to encounter the ordinary perils of the seas of the adventure insured.

(5) In a time policy there is no implied warranty that the ship is seaworthy at any stage of the adventure, but where, with the privity of the assured, the ship is sent to sea in an unseaworthy state, the insurer is not liable for any loss attributable to unseaworthiness. R.S., c. 231, s. 266.

Seaworthiness of movables and fitness to carry

345 (1) In a policy of goods or other movables there is no implied warranty that the goods or movables are seaworthy.

(2) In a voyage policy on goods or other movables there is an implied warranty that, at the commencement of the voyage, the ship is not only seaworthy as a ship, but also that the ship is reasonably fit to carry the goods or other movables to the destination contemplated by the policy. R.S., c. 231, s. 267.

Warranty respecting legality

346 There is an implied warranty that the adventure insured is a lawful one, and that, so far as the assured can control the matter, the adventure will be carried out in a lawful manner. R.S., c. 231, s. 268.

THE VOYAGE

Commencement of voyage

347 (1) Where the subject-matter is insured by a voyage policy “at and from” or “from” a particular place, it is not necessary that the ship should be at that place when the contract is concluded, but there is an implied condition that the adventure will be commenced within a reasonable time and that, where the adventure is not so commenced the insurer may avoid the contract.

(2) The implied condition may be negated by showing that the delay was caused by circumstances known to the insurer before the contract was concluded, or by showing that the insurer waived the condition. R.S., c. 231, s. 269.

Change of port of departure

348 Where the place of departure is specified by the policy, and the ship, instead of sailing from that place, sails from any other place, the risk does not attach. R.S., c. 231, s. 270.

Change of destination

349 Where the destination is specified in the policy, and the ship, instead of sailing for that destination, sails for any other destination, the risk does not attach. R.S., c. 231, s. 271.

Change of voyage

350 (1) Where, after the commencement of the risk, the destination of the ship is voluntarily changed from the destination contemplated by the policy, there is said to be a change of voyage.

(2) Unless the policy otherwise provides, where there is a change of voyage, the insurer is discharged from liability as from the time of change, that is to say, as from the time when the determination to change it is manifested, and it is immaterial that the ship may not in fact have left the course of voyage contemplated by the policy when the loss occurs. R.S., c. 231, s. 272.

Effect of deviation from voyage

351 (1) Where a ship, without lawful excuse, deviates from the voyage contemplated by the policy, the insurer is discharged from liability as from the time of deviation, and it is immaterial that the ship may have regained the ship's route before any loss occurs.

(2) There is a deviation from the voyage contemplated by the policy if

(a) the course of the voyage is specifically designated by the policy and that course is parted from; or

(b) the course of the voyage is not specifically designated by the policy, but the usual and customary course is departed from.

(3) The intention to deviate is immaterial.

(4) There must be a deviation in fact to discharge the insurer from the insurer's liability under the contract. R.S., c. 231, s. 273.

Several ports of discharge

352 (1) Where several ports of discharge are specified by the policy, the ship may proceed to all or any of them, but, in the absence of any usage or sufficient cause to the contrary, the ship must proceed to them, or such of them as the ship goes to, in the order designated by the policy, and, where the ship does not, there is a deviation.

(2) Where the policy is to "ports of discharge", within a given area, that are not named, the ship must, in the absence of any usage or sufficient cause to the contrary, proceed to them, or such of them as the ship goes to, in their geographical order, and, where the ship does not, there is a deviation. R.S., c. 231, s. 274.

Delay in voyage

353 In the case of a voyage policy, the adventure insured must be prosecuted throughout its course with reasonable dispatch, and, where without lawful

excuse it is not so prosecuted, the insurer is discharged from liability as from the time when the delay became unreasonable. R.S., c. 231, s. 275.

Deviation or delay excused

354 (1) Deviation or delay in prosecuting the voyage contemplated by the policy is excused

- (a) if authorized by any special term in the policy;
- (b) if caused by circumstances beyond the control of the master and the master's employer;
- (c) if reasonably necessary in order to comply with an express or implied warranty;
- (d) if reasonably necessary for the safety of the ship or subject-matter insured;
- (e) for the purpose of saving human life, or aiding a ship in distress if human life may be in danger;
- (f) if reasonably necessary for the purpose of obtaining medical or surgical aid for any person on board the ship; or
- (g) if caused by the barratrous conduct of the master or crew and barratry be one of the perils insured against.

(2) When the cause excusing the deviation or delay ceases to operate, the ship must resume the ship's course and prosecute the ship's voyage with reasonable dispatch. R.S., c. 231, s. 276.

ASSIGNMENT OF POLICY**Assignment**

355 (1) A marine policy is assignable unless it contains terms expressly prohibiting assignment and it may be assigned either before or after loss.

(2) Where a marine policy has been assigned so as to pass the beneficial interest in the policy, the assignee of the policy is entitled to sue thereon in the assignee's own name and the defendant is entitled to make any defence arising out of the contract that the defendant would have been entitled to make if the action had been brought in the name of the person by or on behalf of whom the policy was effected.

(3) A marine policy may be assigned by endorsement thereon or in other customary manner. R.S., c. 231, s. 277.

Late assignment

356 Where the assured has parted with or lost the assured's interest in the subject-matter insured, and has not, before or at the time of so doing, expressly or impliedly agreed to assign the policy, any subsequent assignment of the policy is inoperative but nothing in this Section affects the assignment of a policy after loss. R.S., c. 231, s. 278.

THE PREMIUM

Premium

357 Unless otherwise agreed, the duty of the assured or the assured's agent to pay the premium, and the duty of the insurer to issue the policy to the assured or the assured's agent, are concurrent conditions, and the insurer is not bound to issue the policy until payment or tender of the premium. R.S., c. 231, s. 279.

Broker

358 (1) Unless otherwise agreed, where a marine policy is effected on behalf of the assured by a broker, the broker is directly responsible to the insurer for the premium, and the insurer is directly responsible to the assured for the amount that may be payable in respect of losses or in respect of returnable premium.

(2) Unless otherwise agreed, the broker has, as against the assured, a lien upon the policy for the amount of the premium and the broker's charges in respect of effecting the policy, and, where the broker has dealt with the person who employs the broker as a principal, the broker also has a lien on the policy in respect of any balance on any insurance account that may be due to the broker from such person, unless when the debt was incurred the broker had reason to believe that such person was only an agent. R.S., c. 231, s. 280.

Effect of receipt on policy

359 Where a marine policy effected on behalf of the assured by a broker acknowledges the receipt of the premium, such acknowledgement is, in the absence of fraud, conclusive as between the insurer and the assured, but not as between the insurer and broker. R.S., c. 231, s. 281.

Proximate cause of loss

360 (1) Subject to this Part, and unless the policy otherwise provides, the insurer is liable for any loss proximately caused by a peril insured against, but, subject as aforesaid, the insurer is not liable for any loss that is not proximately caused by a peril insured against.

(2) In particular,

(a) the insurer is not liable for any loss attributable to the wilful misconduct of the assured, but, unless the policy otherwise provides, the insurer is liable for any loss proximately caused by a peril insured against, even though the loss would not have happened but for the misconduct or negligence of the master or crew;

(b) unless the policy otherwise provides, the insurer on ship or goods is not liable for any loss proximately caused by delay, although the delay is caused by a peril insured against;

(c) unless the policy otherwise provides, the insurer is not liable for ordinary wear and tear, ordinary leakage and breakage, inherent vice or nature of the subject-matter insured, or for any loss proximately caused by rats or vermin, or for any injury to machinery not proximately caused by maritime perils. R.S., c. 231, s. 282.

Total or partial loss

361 (1) A loss may be either total or partial and any loss other than a total loss, as hereinafter defined, is a partial loss.

(2) A total loss may be either an actual total loss or a constructive total loss.

(3) Unless a different intention appears from the terms of the policy, an insurance against total loss includes a constructive as well as an actual total loss.

(4) Where the assured brings an action for a total loss and the evidence proves only a partial loss, the assured may, unless the policy otherwise provides, recover for a partial loss.

(5) Where goods reach their destination *in specie*, but by reason of obliteration of marks or otherwise, they are incapable of identification, the loss, if any, is partial and not total. R.S., c. 231, s. 283.

Actual total loss

362 (1) Where the subject-matter insured is destroyed, or so damaged as to cease to be a thing of the kind insured, or where the assured is irretrievably deprived thereof, there is an actual total loss.

(2) In the case of an actual total loss no notice of abandonment need be given. R.S., c. 231, s. 284.

Missing ship

363 Where the ship concerned in the adventure is missing, and after the lapse of a reasonable time no news of the ship has been received, an actual total loss may be presumed. R.S., c. 231, s. 285.

Effect of transshipment

364 Where, by a peril insured against, the voyage is interrupted at an intermediate port or place under such circumstances as, apart from any special stipulation in the contract of affreightment, to justify the master in landing and reshipping the goods or other movables, or in transshipping them, and sending them on to their destination, the liability of the insurer continues, notwithstanding the landing or transshipment. R.S., c. 231, s. 286.

Constructive total loss

365 (1) Subject to any express provision in the policy, there is a constructive total loss if the subject-matter insured is reasonably abandoned on account of its actual total loss appearing to be unavoidable, or because it could not be preserved from actual total loss without an expenditure that would exceed its value when the expenditure had been incurred.

(2) In particular, there is a constructive total loss if

(a) the assured is deprived of the possession of the assured's ship or goods by a peril insured against, and

- (i) it is unlikely that the assured can recover the ship or goods, as the case may be, or
- (ii) the cost of recovering the ship or goods, as the case may be, would exceed their value when recovered;
- (b) in the case of damage to a ship, the ship is so damaged by a peril insured against that the cost of repairing the damage would exceed the value of the ship when repaired;
- (c) in the case of damage to goods, the cost of repairing the damage and forwarding the goods to their destination would exceed their value on arrival.

(3) For the purpose of clause (2)(b), in estimating the cost of repairs, no deduction is to be made in respect of general average contribution to those repairs payable by other interests, but account is to be taken of the expense of future salvage operations and of any future general contributions to which the ship would be liable if repaired. R.S., c. 231, s. 287.

Effect of constructive total loss

366 Where there is a constructive total loss, the assured may either treat the loss as a partial loss or abandon the subject-matter insured to the insurer and treat the loss as if it were an actual total loss. R.S., c. 231, s. 288.

Abandonment

367 (1) Subject to this Section, where the assured elects to abandon the subject-matter insured to the insurer, the assured must give notice of abandonment and, where the assured fails to do so, the loss can only be treated as a partial loss.

(2) Notice of abandonment may be given in writing or by word of mouth, or partly in writing and partly by word of mouth, and may be given in any terms that indicate the intention of the assured to abandon the assured's insured interest in the subject-matter insured unconditionally to the insurer.

(3) Notice of abandonment must be given with reasonable diligence after the receipt of reliable information of the loss but, where the information is of a doubtful character, the assured is entitled to a reasonable time to make inquiry.

(4) Where notice of abandonment is properly given, the rights of the assured are not prejudiced by the fact that the insurer refuses to accept the abandonment.

(5) The acceptance of an abandonment may be either express or implied from the conduct of the insurer and the mere silence of the insurer after notice is not an acceptance.

(6) Where notice of abandonment is accepted, the abandonment is irrevocable and the acceptance of the notice conclusively admits liability for the loss and the sufficiency of the notice.

(7) Notice of abandonment is unnecessary if, at the time when the assured receives information of the loss, there would be no possibility of benefit to the insurer if notice were given to the insurer.

(8) Notice of abandonment may be waived by the insurer.

(9) Where an insurer has reinsured the insurer's risk, no notice of abandonment need be given by the insurer. R.S., c. 231, s. 289.

Effect of abandonment

368 (1) Where there is a valid abandonment, the insurer is entitled to take over the interest of the assured in whatever may remain of the subject-matter insured and all proprietary rights incidental thereto.

(2) Upon the abandonment of a ship, the insurer thereof is entitled to any freight in course of being earned, and that is earned by the ship subsequent to the casualty causing the loss, less the expenses of earning it incurred after the casualty and, where the ship is carrying the owner's goods, the insurer is entitled to a reasonable remuneration for the carriage of them subsequent to the casualty causing the loss. R.S., c. 231, s. 290.

PARTIAL LOSSES (INCLUDING SALVAGE AND GENERAL AVERAGE AND PARTICULAR CHARGES)

Particular average loss

369 (1) A particular average loss is a partial loss of the subject-matter insured, caused by a peril insured against, and that is not a general average loss.

(2) Expenses incurred by or on behalf of the assured for the safety or preservation of the subject-matter insured, other than general average and salvage charges, are called particular charges, and particular charges are not included in particular average. R.S., c. 231, s. 291.

Salvage charges

370 (1) In this Section, "salvage charges" means the charges recoverable under maritime law by a salvor independently of contract but does not include the expenses or services in the nature of salvage rendered by the assured or the assured's agents, or any person employed for hire by them, for the purpose of averting a peril insured against, and such expenses, if properly incurred, may be recovered as particular charges or as a general average loss, according to the circumstances under which they were incurred.

(2) Subject to any express provision in the policy, salvage charges incurred in preventing a loss by perils insured against may be recovered as a loss by those perils. R.S., c. 231, s. 292.

General average loss

371 (1) A general average loss is a loss caused by or directly consequential on a general average act and includes a general average expenditure as well as a general average sacrifice.

(2) There is a general average act if any extraordinary sacrifice or expenditure is voluntarily and reasonably made or incurred in time of peril for the purpose of preserving the property imperilled in the common adventure.

(3) Where there is a general average loss, the party on whom it falls is entitled, subject to the conditions imposed by maritime law, to a rateable contribution from the other parties interested, and such contribution is called a general average contribution.

(4) Subject to any express provision in the policy, where the assured has incurred a general average expenditure, the assured may recover from the insurer in respect of the proportion of the loss that falls upon the assured and, in the case of a general average sacrifice, the assured may recover from the insurer in respect of the whole loss without having enforced the assured's right of contribution from the other parties liable to contribute.

(5) Subject to any express provision in the policy, where the assured has paid, or is liable to pay, a general average contribution in respect of the subject insured, the assured may recover therefor from the insurer.

(6) In the absence of express stipulation, the insurer is not liable for any general average loss or contribution if the loss was not incurred for the purpose of avoiding, or in connection with the avoidance of, a peril insured against.

(7) Where ship, freight and cargo, or any two of those interests, are owned by the same assured, the liability of the insurer in respect of general average losses or contributions is to be determined as if those subjects were owned by different persons. R.S., c. 231, s. 293.

MEASURE OF INDEMNITY

Measure of indemnity

372 (1) The sum that the assured can recover in respect of a loss on a policy by which the assured is insured, in the case of an unvalued policy to the full extent of the insurable value, or in the case of a valued policy to the full extent of the value fixed by the policy, is called the measure of indemnity.

(2) Where there is a loss recoverable under the policy, the insurer, or each insurer if there are more than one, is liable for such proportion of the measure of indemnity as the amount of the insurer's or each insurer's subscription bears to the value fixed by the policy in the case of a valued policy, or to the insurable value in the case of an unvalued policy. R.S., c. 231, s. 294.

Total loss

373 Subject to this Part and to any express provision in the policy, where there is a total loss of the subject-matter insured,

(a) where the policy is a valued policy, the measure of indemnity is the sum fixed by the policy;

(b) where the policy is an unvalued policy, the measure of indemnity is the insurable value of the subject-matter insured. R.S., c. 231, s. 295.

Partial loss respecting ship

374 Where a ship is damaged, but is not totally lost, the measure of indemnity, subject to any express provision in the policy, is as follows:

(a) where the ship has been repaired, the assured is entitled to the reasonable cost of the repairs, less the customary deductions, but not exceeding the sum insured in respect of any one casualty;

(b) where the ship has been only partially repaired, the assured is entitled to the reasonable cost of such repairs, computed as above, and also to be indemnified for the reasonable depreciation, if any, arising from the unrepaired damage, if the aggregate amount does not exceed the cost of repairing the whole damage, computed as above;

(c) where the ship has not been repaired and has not been sold in the ship's damaged state during the risk, the assured is entitled to be indemnified for the reasonable depreciation arising from the unrepaired damage, but not exceeding the reasonable cost of repairing such damage, computed as above. R.S., c. 231, s. 296.

Partial loss of freight

375 Subject to any express provision in the policy, where there is a partial loss of freight, the measure of indemnity is such proportion of the sum fixed by the policy in the case of a valued policy, or of the insurable value in the case of an unvalued policy, as the proportion of freight lost by the assured bears to the whole freight at the risk of the assured under the policy. R.S., c. 231, s. 297.

Partial loss of movables

376 Where there is a partial loss of goods, merchandise or other movables, the measure of indemnity, subject to any express provision in the policy, is as follows:

(a) where part of the goods, merchandise or other movables insured by a valued policy is totally lost, the measure of indemnity is such proportion of the sum fixed by the policy as the insurable value of the part lost bears to the insurable value of the whole, ascertained as in the case of an unvalued policy;

(b) where part of the goods, merchandise or other movables insured by an unvalued policy is totally lost, the measure of indemnity is the insurable value of the part lost, ascertained as in case of total loss;

(c) where the whole or any part of the goods or merchandise insured has been delivered damaged at its destination, the measure of indemnity is such proportion of the sum fixed by the policy in the case of a valued policy, or of the insurable value in the case of an unvalued policy, as the difference between the gross sound and damaged values at the place of arrival bears to the gross sound value;

(d) "gross proceeds" means the actual price obtained at a sale where all charges on sale are paid by the sellers;

(e) "gross value" means the wholesale price or, where there is no such price, the estimated value, with, in either case, freight, landing charges and duty paid beforehand, but, in the case of goods or merchandise custom-

arily sold in bond, the bonded price is deemed to be the gross value. R.S., c. 231, s. 298.

Apportionment of valuation

377 (1) Where different species of property are insured under a single valuation, the valuation must be apportioned over the different species in proportion to their respective insurable values, as in the case of an unvalued policy, and the insured value of any part of a species is such proportion of the total insured value of the same as the insurable value of the part bears to the insurable value of the whole, ascertained in both cases as provided by this Part.

(2) Where a valuation has to be apportioned and particulars of the prime cost of each separate species, quality or description of goods cannot be ascertained, the division of the valuation may be made over the net arrived sound values of the different species, qualities or descriptions of goods. R.S., c. 231, s. 299.

Indemnity payable

378 (1) Subject to any express provision in the policy, where the assured has paid, or is liable for, any general average contribution, the measure of indemnity is the full amount of such contribution, if the subject-matter liable to contribution is insured for its full contributory value but, where such subject-matter is not insured for its full contributory value, or where only part of it is insured, the indemnity payable by the insurer must be reduced in proportion to the underinsurance, and, where there has been a particular average loss that constitutes a deduction from the contributory value, and for which the insurer is liable, that amount must be deducted from the insured value in order to ascertain what the insurer is liable to contribute.

(2) Where the insurer is liable for salvage charges, the extent of the insurer's liability must be determined on the like principle. R.S., c. 231, s. 300.

Indemnity to third party

379 Where the assured has effected an insurance in express terms against any liability to a third party, the measure of indemnity, subject to any express provision in the policy, is the amount paid or payable by the assured to such third party in respect of such liability. R.S., c. 231, s. 301.

Measure of indemnity for other loss

380 (1) Where there has been a loss in respect of any subject-matter not expressly provided for in the foregoing provisions of this Part, the measure of indemnity must be ascertained, as nearly as may be, in accordance with those provisions, in so far as applicable to the particular case.

(2) Nothing in this Part relating to the measure of indemnity affects the rules relating to double insurance, or prohibits the insurer from disproving interest wholly or in part, or from showing that, at the time of the loss, the whole or any part of the subject-matter insured was not a risk under the policy. R.S., c. 231, s. 302.

Particular average warranty

381 (1) Where the subject-matter insured is warranted free from particular average, the assured cannot recover for a loss of part, other than a loss incurred by a general average sacrifice, unless the contract contained in the policy is apportionable but, where the contract is apportionable, the assured may recover for a total loss of any apportionable part.

(2) Where the subject-matter insured is warranted free from particular average, either wholly or under a certain percentage, the insurer is nevertheless liable for salvage charges, and for particular charges and other expenses properly incurred pursuant to the provisions of the suing and labouring clause in order to avert a loss insured against.

(3) Unless the policy otherwise provides, where the subject-matter insured is warranted free from particular average under a specified percentage, a general average loss cannot be added to a particular average loss to make up the specified percentage.

(4) For the purpose of ascertaining whether the specified percentage has been reached, regard may be had only to the actual loss suffered by the subject-matter insured and particular charges and the expenses of and incidental to ascertaining and proving the loss must be excluded. R.S., c. 231, s. 303.

Successive losses

382 (1) Unless the policy otherwise provides and subject to this Part, the insurer is liable for successive losses, even though the total amount of such losses may exceed the sum insured.

(2) Where, under the same policy, a partial loss that has not been repaired or otherwise made good is followed by a total loss, the assured can only recover in respect of the total loss.

(3) Nothing in this Section affects the liability of the insurer under the suing and labouring clause. R.S., c. 231, s. 304.

Suing and labouring clause

383 (1) Where the policy contains a suing and labouring clause, the engagement thereby entered into is deemed to be supplementary to the contract of insurance, and the assured may recover from the insurer any expenses properly incurred pursuant to the clause, notwithstanding that the insurer may have paid for a total loss, or that the subject-matter may have been warranted free from particular average, either wholly or under a certain percentage.

(2) General average losses and contributions and salvage charges as defined by this Part are not recoverable under the suing and labouring clause.

(3) Expenses incurred for the purpose of averting or diminishing any loss not covered by the policy are not recoverable under the suing and labouring clause.

(4) It is the duty of the assured and the assured's agents in all cases to take such measures as may be reasonable for the purpose of averting or minimizing a loss. R.S., c. 231, s. 305.

RIGHTS OF INSURER ON PAYMENT

Subrogation where loss

384 (1) Where the insurer pays for a total loss, either of the whole or, in the case of goods, of any apportionable part of the subject-matter insured, the insurer thereupon becomes entitled to take over the interest of the assured in whatever may remain of the subject-matter so paid for, and the insurer is thereby subrogated to all the rights and remedies of the assured in and in respect of that subject-matter as from the time of the casualty causing the loss.

(2) Subject to subsection (1), where the insurer pays for a partial loss, the insurer acquires no title to the subject-matter insured, or such part of it as may remain, but the insurer is thereupon subrogated to all rights and remedies of the assured in and in respect of the subject-matter insured as from the time of the casualty causing the loss, in so far as the assured has been indemnified, according to this Part, by such payment for the loss. R.S., c. 231, s. 306.

Contribution

385 (1) Where the assured is overinsured by double insurance, each insurer is bound, as between that insurer and the other insurers, to contribute rateably to the loss in proportion to the amount for which the insurer is liable under the insurer's contract.

(2) Where any insurer pays more than the insurer's proportion of the loss, the insurer is entitled to maintain an action for contribution against the other insurers, and is entitled to the like remedies as a surety who has paid more than the surety's proportion of the debt. R.S., c. 231, s. 307.

Effect of underinsurance

386 Where the assured is insured for an amount less than the insurable value or, in the case of a valued policy, for an amount less than the policy valuation, the assured is deemed to be the assured's own insurer in respect of the uninsured balance. R.S., c. 231, s. 308.

RETURN OF PREMIUM

Right to return of premium

387 Where the premium, or a proportionate part thereof, is by this Part declared to be returnable,

(a) where already paid, it may be recovered by the assured from the insurer; and

(b) where unpaid, it may be retained by the assured or the assured's agent. R.S., c. 231, s. 309.

Return by agreement

388 Where the policy contains a stipulation for the return of the premium, or a proportionate part thereof, on the happening of a certain event, and that event happens, the premium, or, as the case may be, the proportionate part thereof, is thereupon returnable to the assured. R.S., c. 231, s. 310.

Total failure of consideration

389 (1) Where the consideration for the payment of the premium totally fails, and there has been no fraud or illegality on the part of the assured or the assured's agents, the premium is thereupon returnable to the assured.

(2) Where the consideration for the payment of the premium is apportionable and there is a total failure of any apportionable part of the consideration, a proportionate part of the premium is, under the like conditions, thereupon returnable to the assured.

(3) In particular,

(a) where the policy is void, or is avoided by the insurer as from the commencement of the risk, the premium is returnable, if there has been no fraud or illegality on the part of the assured, but where the risk is not apportionable and has once attached, the premium is not returnable;

(b) where the subject-matter insured, or part thereof, has never been imperilled, the premium, or, as the case may be, a proportionate part thereof, is returnable, but, where the subject-matter has been insured "lost or not lost" and has arrived in safety at the time when the contract is concluded, the premium is not returnable unless at such time the insurer knew of the safe arrival;

(c) where the assured has no insurable interest throughout the currency of the risk, the premium is returnable, but this rule does not apply to a policy effected by way of gaming or wagering;

(d) where the assured has a defeasible interest that is terminated during the currency of the risk, the premium is not returnable;

(e) where the assured has overinsured under an unvalued policy, a proportionate part of the premium is returnable;

(f) subject to the foregoing provisions, where the assured has overinsured by double insurance, a proportionate part of the several premiums is returnable, but, where the policies are effected at different times, and any earlier policy has at any time borne the entire risk, or where a claim has been paid on the policy in respect of the full sum insured thereby, no premium is returnable in respect of that policy, and when the double insurance is effected knowingly by the assured no premium is returnable. R.S., c. 231, s. 311.

MUTUAL INSURANCE

Mutual insurance

390 (1) Where two or more persons mutually agree to insure each other against marine losses there is said to be a mutual insurance.

(2) The provisions of this Part relating to the premium do not apply to mutual insurance, but a guarantee, or such other arrangement as may be agreed upon, may be substituted for the premium.

(3) This Part, in so far as it may be modified by the agreement of the parties, may in the case of mutual insurance be modified by the terms of the policies issued by the association or by the rules and regulations of the association.

(4) Subject to the exceptions mentioned in this Section, this Part applies to a mutual insurance. R.S., c. 231, s. 312.

SUPPLEMENTAL

Ratification of contract

391 Where a contract of marine insurance is in good faith effected by one person on behalf of another, the person on whose behalf it is effected may ratify the contract even after the person is aware of a loss. R.S., c. 231, s. 313.

Variation by agreement or usage

392 (1) Where any right, duty or liability would arise under a contract of marine insurance by implication of law, it may be negatived or varied by express agreement, or by usage, if the usage is such as to bind both parties to the contract.

(2) This Section extends to any right, duty or liability declared by this Part that may be lawfully modified by agreement. R.S., c. 231, s. 314.

Meaning of reasonable

393 Where, by this Part, any reference is made to reasonable time, reasonable premium or reasonable diligence, the question what is reasonable is a question of fact. R.S., c. 231, s. 315.

Common law

394 The rules of the common law, including the law merchant, save in so far as they are inconsistent with the express provisions of this Part, continue to apply to contracts of marine insurance. R.S., c. 231, s. 316.

SCHEDULE TO PART X

(Section 338)

FORM OF POLICY

Be it known that as well as in own name as for and in the name and names of all and every other person or persons to whom the same doth, may, or shall appertain, in part or in all doth make assurance and cause and them, and

every of them, to be insured lost or not lost, at and from Upon any kind of goods and merchandises, and also upon the body, tackle, apparel, ordnance, munition, artillery, boat, and other furniture, of and in the good ship or vessel called the whereof is master under God, for this present voyage, or whosoever else shall go for master in the said ship, or by whatsoever other name or names the said ship, or the master thereof, is or shall be named or called; beginning the adventure upon the said goods and merchandises from the loading hereof aboard the said ship, upon the said ship, etc., and so shall continue and endure, during the ship's abode there, upon the said ship, etc. And further, until the said ship, with all the ship's ordnance, tackle, apparel, etc., and goods and merchandises whatsoever shall be arrived at upon the said ship, etc., until the ship hath moored at anchor twenty-four hours in good safety; and upon the goods and merchandises, until the same be there discharged and safely landed. And it shall be lawful for the said ship, etc., in this voyage, to proceed and sail to and touch and stay at any ports or places whatsoever without prejudice to this insurance. The said ship, etc., goods and merchandises, etc., for so much as concerns the assured by agreement between the assured and assurers in this policy, are and shall be valued at

Touching the adventures and perils which we, the assurers, are contented to bear and to take upon us in this voyage; they are of the seas, men-of-war, fire enemies, pirates, rovers, thieves, jettisons, letters of mart and countermart, surprisals, taking at sea, arrests, restraints, and detentions of all kings, princes, and people, of what nation, condition, or quality soever, barratry of the master and mariners, and of all other perils, losses, and misfortunes, that have or shall come to hurt, detriment, or damage of the said goods and merchandises, and ship, etc., or any part thereof. And in case of any loss or misfortune it shall be lawful to the assured, their factors, servants and assigns, to sue, labour, and travel for in and about the defence, safeguards, and recovery of the said goods and merchandises, and ship, etc., or any part thereof, without prejudice to the insurance; to the charges whereof we, the assurers, will contribute each one according to the rate and quantity of the assurer's sum herein assured. And it is especially declared and agreed that no acts of the insurer or insured in recovering, saving, or preserving the property insured shall be considered as a waiver, or acceptance of abandonment. And it is agreed by us, the insurers, that this writing or policy of assurance shall be of as much force and effect as the surest writing or policy of assurance heretofore made in Lombard Street, or in the Royal Exchange, or elsewhere in London. And so, we the assurers, are contented, and do hereby promise and bind ourselves, each one for his own part, our heirs, executors, and goods to the assured, their executors, administrators, and assigns, for the true performance of the premises, confessing ourselves paid the consideration due unto us for this assurance by the assured, at and after the rate of

In witness whereof we, the assurers, have subscribed our names and sums assured in

N. B. Corn, fish, salt, fruit, flour, and seed are warranted free from average, unless general, or the ship be stranded; sugar, tobacco, hemp, flax, hides and skins are warranted free from average, under five pounds per centum; and all other goods, also the ship and freight are warranted free from average, under three pounds per centum, unless general, or the ship be stranded.

RULES FOR CONSTRUCTION OF POLICY

The following are the rules referred to by this Part for the construction of a policy in the above or other like form, where the context does not otherwise require:

1 Where the subject-matter is insured "lost or not lost" and the loss has occurred before the contract is concluded, the risk attaches, unless at such time the assured was aware of the loss, and the insurer was not.

2 Where the subject-matter is insured "from" a particular place, the risk does not attach until the ship starts on the voyage insured.

3 (a) Where a ship is insured “at and from” a particular place, and the ship is at that place in good safety when the contract is concluded, the risk attaches immediately.

(b) Where the ship be not at that place when the contract is concluded, the risk attaches as soon as the ship arrives there in good safety, and unless the policy otherwise provides, it is immaterial that the ship is covered by another policy for a specified time after arrival.

(c) Where chartered freight is insured “at and from” a particular place, and the ship is at that place in good safety when the contract is concluded, the risk attaches immediately. Where the ship be not there when the contract is concluded, the risk attaches as soon as the ship arrives there in good safety.

(d) Where freight, other than chartered freight, is payable without special conditions and is insured “at and from” a particular place, the risk attaches pro rata as the goods or merchandise are shipped; but, where there be cargo in readiness which belongs to the ship-owner, or which some other person has contracted with the ship-owner to ship, the risk attaches as soon as the ship is ready to receive such cargo.

4 Where goods or other movables are insured “from the loading thereof”, the risk does not attach until such goods or movables are actually on board, and the insurer is not liable for them while in transit from the shore to the ship.

5 Where the risk on goods or other movables continues until they are “safely landed,” they must be landed in the customary manner and within a reasonable time after arrival at the port of discharge, and where they are not so landed the risk ceases.

6 In the absence of any further license or usage, the liberty to touch and stay “at any port or place whatsoever” does not authorize the ship to depart from the course of the ship’s voyage from the port of departure to the port of destination.

7 The term “perils of the seas” refers only to fortuitous accidents or casualties of the seas. It does not include the ordinary action of the winds and waves.

8 The term “pirates” includes passengers who mutiny and rioters who attack the ship from the shore.

9 The term “thieves” does not cover clandestine theft or a theft committed by any one of the ship’s company, whether crew or passengers.

10 The term “arrests, etc., of kings, princes, and people” refers to political or executive acts, and does not include a loss caused by riot or by ordinary judicial process.

11 The term “barratry” includes every wrongful act wilfully committed by the master or crew to the prejudice of the owner, or, as the case may be, the charterer.

12 The term “all other perils” includes only perils similar in kind to the perils specifically mentioned in the policy.

13 The term “average unless general” means a partial loss of the subject-matter insured other than a general average loss, and does not include “particular charges”.

14 Where the ship has stranded, the insurer is liable for the excepted losses, although the loss is not attributable to the stranding, provided that when the stranding takes

place the risk has attached and, if the policy be on goods, that the damaged goods are on board.

15 The term “ship” includes the hull, materials and outfit, stores and provisions for the officers and crew, and, in the case of vessels engaged in a special trade, the ordinary fittings requisite for the trade, and also, in the case of a steamship, the machinery, boilers and coals, oils, and engine stores, if owned by the assured.

16 The term “freight” includes the profit derivable by a ship-owner from the employment of his ship to carry his own goods or movables, as well as freight payable by a third party, but does not include passage-money.

17 The term “goods” means goods in the nature of merchandise, and does not include personal effects or provisions and stores for use on board.

In the absence of any usage to the contrary, deck cargo and living animals must be insured specifically, and not under the general denomination of goods.

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

PART XI

PENALTIES

General penalty

395 (1) A person who contravenes this Act is liable to a fine not exceeding \$5,000 for each offence.

(2) Any person who violates Section 5 or 10, subsection 65(2) or Section 84 is liable to a penalty of \$10 for every day that person is in violation of the Section.

(3) A rating bureau or licensed insurer that files information with the Board that appears calculated to mislead is guilty of an offence and liable to a fine not exceeding \$250,000.

(4) An insurer that withdraws from the business of automobile insurance in contravention of Section 234 is guilty of an offence and liable to a fine not exceeding \$1,000,000. R.S., c. 231, s. 317; 2003, c. 11, s. 4; 2003 (2nd Sess.), c. 1, s. 23.

Limitation

396 A prosecution for a contravention of this Act must be commenced within two years of the contravention. R.S., c. 231, s. 318.

PART XII

AGREEMENT

Agreement with Quebec

397 The Attorney General, with the approval of the Governor in Council, may enter into an agreement with the Government of Quebec or an agency thereof respecting automobile accident claims in each of the jurisdictions so as to assure

Nova Scotia residents of adequate coverage in the case of automobile accidents occurring in the Province of Quebec. R.S., c. 231, s. 319.

PART XIII

SELF-INSURANCE PLANS

Interpretation of Part

398 In this Part, unless the context otherwise requires,

“attorney” means a person authorized to act for subscribers pursuant to Section 401;

“subscribers” means the persons exchanging with each other contracts of indemnity or inter-insurance pursuant to Section 399. R.S., c. 231, s. 320.

Contracts of indemnity or inter-insurance

399 It is lawful for a person to exchange, with other persons in the Province and elsewhere, contracts of indemnity or inter-insurance for any class of insurance for which an insurance company may be licensed pursuant to this Act, except life insurance, accident insurance, sickness insurance and guarantee insurance. R.S., c. 231, s. 321.

Not deemed to be insurer

400 No person is deemed to be an insurer within the meaning of this Act by reason of exchanging with other persons contracts of indemnity or inter-insurance pursuant to this Act. R.S., c. 231, s. 322.

Execution of contracts

401 (1) Contracts of indemnity or inter-insurance may be executed on behalf of subscribers by a person other than a subscriber acting as an attorney under a power of attorney, a copy of which has been filed pursuant to Section 402.

(2) Notwithstanding any condition or stipulation of a power of attorney or of a contract of indemnity or inter-insurance, an action or proceeding in respect of a contract may be maintained in a court of competent jurisdiction in the Province. R.S., c. 231, s. 323.

Declaration

402 The persons constituting the exchange shall, through their attorney, file with the Superintendent a declaration verified by oath, setting forth

(a) the name of the attorney and the name or designation under which contracts are issued, which name or designation may not be so similar to any other name or designation previously adopted by any exchange or by any licensed insurer as, in the opinion of the Superintendent, to be likely to result in confusion or deception;

(b) the classes of insurance to be effected or exchanged under contracts;

- (c) a copy of the form of the contract, agreement or policy under or by which contracts of indemnity or inter-insurance are to be effected or exchanged;
- (d) a copy of the form of power of attorney under which contracts are to be effected or exchanged;
- (e) the location of the office from which contracts are to be issued;
- (f) a financial statement in the form prescribed by the Superintendent;
- (g) evidence satisfactory to the Superintendent that it is the practice of the exchange to require its subscribers to maintain in the hands of the attorney, as a condition of membership in the exchange, a premium deposit reasonably sufficient for the risk assumed by the exchange; and
- (h) evidence satisfactory to the Superintendent that the management of the affairs of the exchange is subject to the supervision of an advisory board or committee of the subscribers in accordance with the terms of the power of attorney. R.S., c. 231, s. 324.

Licence

403 (1) Upon an exchange complying with this Part, the Superintendent may issue a licence.

(2) Notwithstanding anything contained in this Act, the Superintendent may, with the approval of the Minister, require an exchange, as a condition of the issue or renewal of its licence, to deposit approved securities with the Minister in such amount and upon such terms and conditions as the Superintendent considers proper. R.S., c. 231, s. 325; 2003 (2nd Sess.), c. 1, s. 24.

Licence may not be issued

404 (1) In this Section, “automobile” has the same meaning as in Part VII.

(2) A licence may not be issued to an exchange to effect or exchange contracts of indemnity or inter-insurance

(a) against loss by fire, until evidence satisfactory to the Superintendent has been filed with the Superintendent that applications have been made for indemnity upon at least 75 risks in the Province or elsewhere aggregating not less than \$1,500,000 as represented by executed contracts of bona fide applications to become concurrently effective; or

(b) in respect of automobiles, until evidence satisfactory to the Superintendent has been filed with the Superintendent that applications have been made for indemnity upon at least 500 automobiles as represented by executed contracts or bona fide applications to become concurrently effective and that arrangements satisfactory to the Superintendent are in effect for the reinsurance of all liabilities in excess of such limits as the Superintendent may prescribe. R.S., c. 231, s. 326.

Deemed service

405 Where the office from which contracts are to be issued is not in the Province, service upon the Superintendent of notice or process in any action or proceeding in the Province in respect of a contract of indemnity or inter-insurance effected by the exchange is deemed a service upon the subscribers who are members of the exchange at the time of the service. R.S., c. 231, s. 327.

Statements to be filed with Superintendent

406 There must be filed with the Superintendent by the attorney, as often as the Superintendent may require, a statement of the attorney under oath showing, in the case of fire insurance, the maximum amount of indemnity upon any single risk and a statement of the attorney verified by oath to the effect that the attorney has examined the commercial rating of the subscribers of the exchange as shown by the reference book of a commercial agency, having at least 500 subscribers, and that from such examination or other information in the possession of the attorney it appears that no subscriber has assumed on any single fire insurance risk an amount greater than 10% of the net worth of such subscriber. R.S., c. 231, s. 328.

Reserve fund and guarantee fund

407 (1) In this Section, "approved securities" means securities that are authorized for investment pursuant to Section 408.

(2) There must, at all times, be maintained with such attorney, as a reserve fund, a sum in cash or approved securities equal to 50% of the annual deposits or advance premiums collected or credited to the accounts of subscribers on contracts in force having one year or less to run, and pro rata on contracts for longer periods.

(3) Except as hereinafter provided, there must also be maintained as a guarantee fund or surplus an additional sum, in excess of all liabilities, in cash or approved securities amounting to not less than \$50,000.

(4) In the case of a fire insurance exchange whose principal office is in the Province, the guarantee fund or surplus referred to in subsection (3) must not be less than \$25,000.

(5) In the case of an automobile insurance exchange whose principal office is in the Province, the guarantee fund or surplus referred to in subsection (3) must the first year of operation of the exchange, be maintained at an amount not less than \$10,000 and thereafter not less than \$25,000.

(6) Where, at any time, the amounts on hand are less than those required by this Section, the subscribers or the attorney shall forthwith make up the deficiency.

(7) Where funds, other than those that accrued from premiums or deposits of subscribers, are supplied to make up a deficiency, such funds must be deposited and held for the benefit of subscribers on such terms and conditions as the Superintendent may require while a deficiency exists, and may thereafter be returned to the depositor. R.S., c. 231, s. 329.

Investment of surplus funds

408 (1) Where the principal office of the exchange is in the Province, the surplus insurance funds and the reserve fund of the exchange must be invested in the class of securities prescribed by the Superintendent.

(2) Where the principal office of the exchange is outside the Province, it is a condition precedent to the issue of a licence pursuant to this Act that evidence satisfactory to the Superintendent is filed with the Superintendent showing that the class of security in which funds of the exchange are required by law to be invested, and are in fact invested, is within the limits of investment prescribed for the investment of the reserve funds of an insurance corporation by the jurisdiction in which the office of the exchange is situate. R.S., c. 231, s. 330.

Liability on behalf of subscribers

409 (1) No exchange shall undertake any liability on a contract of indemnity, inter-insurance or insurance except on behalf of the subscriber.

(2) No attorney or exchange shall effect reinsurance of any risks undertaken by the exchange in any licensed reciprocal or inter-insurance exchange unless such exchange operates on the same underwriting standards. R.S., c. 231, s. 331.

Attorney not to act until licence issued

410 (1) No person shall act as attorney, or for or on behalf of an attorney, in the exchange of contracts of indemnity or inter-insurance, or in acts or transactions in connection therewith, until a licence has been issued and is in force.

(2) Every person who, in contravention of subsection (1), undertakes or effects or agrees or offers to undertake or effect an exchange of contracts of indemnity or inter-insurance, or any act or transaction in connection therewith, is guilty of an offence and on conviction is liable to a fine of not less than \$50 and not more than \$500. R.S., c. 231, s. 332.

Licence suspended or revoked

411 (1) Where a licensed exchange or attorney contravenes this Act, the licence of the exchange may be suspended or revoked by the Minister on the report of the Superintendent after due notice and opportunity for a hearing before the Superintendent has been given to the exchange or its attorney, but the suspension or revocation does not affect the validity of contracts of indemnity or inter-insurance effected prior thereto or the rights and obligations of subscribers under such contracts.

(2) Notice of suspension or revocation must be given by the Superintendent in at least two successive issues of the Royal Gazette as soon as is reasonably possible after the suspension or revocation. R.S., c. 231, s. 333; 2003 (2nd Sess.), c. 1, s. 25.

Insurance against fire

412 Notwithstanding anything in this Act, any person may insure against fire any property situated in the Province in an exchange not licensed pursuant to this Act, and any property so insured or to be insured may be inspected and any loss incurred in respect thereof adjusted, if such insurance is effected outside the Prov-

ince and without any solicitation in the Province, directly or indirectly, on the part of the insurer. R.S., c. 231, s. 334.

CHAPTER I-8

**An Act to Impose a Tax on the Income
Derived from Insurance Premiums**

Table of Contents

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

	Section
Short title.....	1
Interpretation.....	2
Tax on insurance premium and exception.....	3
Quarterly tax payment.....	4
Interest on overdue payment and interest rate	5
Extension of time	6
Inquiry	7
Records and accounts.....	8
Minister not bound.....	9
Recovery of tax by distress or court action.....	10
Form of action and settlement of claim	11
Forgiveness or refund of tax	12
Inspection of return and duty of public servant	13
Penalty.....	14
Regulations.....	15

Short title

1 This Act may be cited as the *Insurance Premiums Tax Act*. R.S., c. 232, s. 1.

Interpretation

2 In this Act,

“insurance company” means a person or corporation carrying on in the Province the business of insurance, as defined in the *Insurance Act*, and includes a reciprocal or inter-insurance exchange and underwriters and syndicates of underwriters operating on the plan known as “Lloyds”, but does not include

(a) a fraternal society as defined in the *Insurance Act*; or

(b) a mutual insurance corporation in respect of any taxation year in which the net premium income in the Province of the corporation is wholly derived from the insurance of churches, schools or other religious, educational or charitable institutions;

“marine insurance” has the same meaning as it has in the *Insurance Act*;

“Minister” means the Minister of Finance and Treasury Board;

“taxation year” means a fiscal year in which premiums are receivable in respect of business transacted in the Province. R.S., c. 232, s. 2; 1998, c. 8, s. 50; 2008, c. 2, s. 24.

Tax on insurance premium and exception

3 (1) In order to raise revenue for provincial purposes, every insurance company shall pay to the Minister a tax equal to three per cent of the gross premiums on life insurance, accident insurance and sickness insurance as defined in the *Insurance Act* and four per cent of gross premiums on other than life insurance, accident insurance and sickness insurance, receivable by the company during the taxation year in respect of business transacted by it in the Province other than premiums in respect of reinsurance ceded to the company by other companies and considerations for annuities after deducting from such gross premiums

(a) the cash value of dividends paid or credited by the company to policy holders; and

(b) premiums returned by the company.

(2) For the purpose of subsection (1), “business transacted in the Province” means

(a) in the case of insurance of property, all contracts on which premiums are receivable in respect of property that was situated in the Province at the time the premiums became payable;

(b) in the case of all other insurance, all contracts on which premiums are receivable in respect of persons who were resident in the Province at the time the premiums became payable.

(3) This Section does not apply to premiums receivable in respect of contracts of marine insurance.

(4) This Section does not apply to mutual insurance companies designated pursuant to Section 15 with respect to premiums receivable on contracts of insurance on farm and fishing property written after December 31, 2007. R.S., c. 232, s. 3; 2008, c. 2, s. 25.

Quarterly tax payment

4 Every insurance company liable to tax under Section 3 shall, within 60 days after the end of each quarter in each taxation year, pay an amount equal to the actual amount of tax payable by it in respect of that quarter. R.S., c. 232, s. 4; 1998, c. 8, s. 51.

Interest on overdue payment and interest rate

5 (1) Where any tax or portion thereof payable under this Act is not paid in full on the date on which payment is due, the insurance company shall pay to the Minister the amount due together with interest on the sum of the tax or portion thereof unpaid at the rate per year determined in accordance with subsection (2) from the date on which the tax or portion thereof was due until payment is made.

(2) The rate for the purpose of subsection (1) is the sum of the Bank of Canada rate on the date on which the payment was due and four per cent. R.S., c. 232, s. 5.

Extension of time

6 The Minister may, before or after the time for making it, enlarge the time for making any return. R.S., c. 232, s. 6.

Inquiry

7 (1) Where the Minister, in order to enable the Minister to determine whether or not a return furnished is correct, desires further information, the Minister may, by registered letter addressed to the company or an agent of the company or, if the company has no agent within the Province, to any person, persons or corporation doing business with the company, require a further return to be furnished under oath within 30 days and the Minister may designate a person to examine the books, papers, documents and records of any company required to furnish returns under this Act.

(2) Where the required information is not furnished to the satisfaction of the Minister, the Governor in Council may direct inquiry to be made by a commissioner or commissioners appointed under the *Public Inquiries Act*, and the determination of the commissioner or commissioners is, for the purposes of this Act, final as to the particulars mentioned in the report, but the Governor in Council may for cause vary the report; but the findings of the commissioner or commissioners may not be varied so that the amount of the tax payable by the company is increased without giving the company an opportunity of being heard.

(3) Where the inquiry is occasioned by failure to furnish the information required by the Minister, the company, unless the Governor in Council otherwise directs, shall pay the costs of the inquiry, but if the return is found to be correct and required information appears to have been duly furnished, the Minister may direct the costs or such of them as were necessary to be paid by the Province.

(4) Where the commissioner or commissioners find that the return understates the amount upon which the tax should be paid, the company, besides paying the costs of the inquiry, shall pay the tax based on the amount as found by the commissioner or commissioners, with 50% added to the tax, unless the Governor in Council otherwise directs.

(5) The costs of the inquiry may be fixed and certified by the Minister or the Minister may direct the same to be taxed, and when payable to the Minister the same may be recovered in the manner hereby provided for the recovery of a tax.

(6) Where the Minister directs the costs to be taxed, the costs must be taxed by a taxing officer of the Supreme Court of Nova Scotia.

(7) Where the commissioner or commissioners find that the return understates the amount on which the tax should be paid, but also certify that the understatement was not made with intent to decrease the amount of the tax to be paid but was made in good faith and with no improper motive, the Governor in Council may, upon the recommendation of the Minister, remit so much of the added percentage and so much of the costs as the Governor in Council may seem meet. R.S., c. 232, s. 7.

Records and accounts

8 If any company fails or refuses to keep adequate books or accounts for the purposes of ascertaining the amount of the tax payable under this Act, the Minister may require such company to keep such records and accounts as the Minister may prescribe. R.S., c. 232, s. 8.

Minister not bound

9 Any return or information supplied by or on behalf of any company is not binding upon the Minister and, notwithstanding such return or information or if no return has been made, the Minister may determine the amount of the tax to be paid by any company. R.S., c. 232, s. 9.

Recovery of tax by distress or court action

10 (1) In default of payment of any tax by this Act imposed, the tax may be levied and collected with costs by distress upon the goods and chattels wherever found of the company liable therefor under a warrant signed by the Minister directed to the sheriff of any county, and the sheriff shall levy and collect the tax, or so much thereof as may be in arrears, and all costs, by sale of the goods and chattels of the company, or so much thereof as may be necessary to satisfy the tax and costs.

(2) Any tax or penalty imposed by this Act may, at the option of the Minister, be recovered with interest as aforesaid and costs in any court of competent jurisdiction by and in the name of the Minister, and the action must be tried without a jury. R.S., c. 232, s. 10.

Form of action and settlement of claim

11 (1) An action brought by the Minister under this Act must be brought and prosecuted in and by the Minister's name of office, and may be continued by the Minister's successor in office, as if no change had occurred.

(2) The Minister may, either before or after the institution of proceedings against any company under this Act for enforcing payment of any tax or any pecuniary penalty, accept from the company the payment of a sum not less than the amount of the tax with interest or a sum not less than the minimum nor more than the maximum pecuniary penalty prescribed, as the case may be, and such payment is a full satisfaction, release and discharge of the tax or penalty. R.S., c. 232, s. 11.

Forgiveness or refund of tax

12 Where any doubt or dispute arises as to the liability of a company to pay a tax or any portion of a tax demanded under the authority of this Act or if owing to special circumstances it is considered inequitable to demand payment of the whole amount imposed under this Act, the Minister may accept such amount as the Minister may consider proper and, if the tax demanded has been paid under protest, the Minister may refund the same or any part thereof. R.S., c. 232, s. 12.

Inspection of return and duty of public servant

13 (1) No return made by any company under this Act is open to inspection by any person except the officers appointed under this Act, whose duty it is to inspect the return and any person appointed by the Governor in Council to inspect the return.

(2) No person employed in the public service of the Province shall communicate or allow to be communicated to any person not legally entitled thereto any information obtained under this Act or allow any person not legally entitled thereto to inspect or have access to any return made under this Act. R.S., c. 232, s. 13.

Penalty

14 Any company or person that fails to make a return required by or under this Act is liable to a penalty of \$10 for every day during which the failure continues. R.S., c. 232, s. 14.

Regulations

15 (1) The Governor in Council may make regulations

(a) designating mutual insurance companies for the purpose of subsection 3(4);

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

(c) considered necessary or advisable by the Governor in Council to carry out effectively the intent and purpose of this Act.

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

(3) A regulation made pursuant to subsection (1) may, where it so provides, be made retroactive in its operation to a date not earlier than January 1, 2008. 2008, c. 2, s. 26.

CHAPTER I-9

**An Act Respecting
an Insured Prescription Drug Plan,
including Fair Drug Pricing**

Table of Contents

	Section
Short title.....	1
Interpretation.....	2
Insured Prescription Drug Plan.....	3
Insurance of Last Resort.....	4
Persons not eligible for coverage.....	5
Persons eligible to be enrolled in program.....	6
Regulations.....	7
Payment of benefits by Minister.....	8
Interchangeability of a drug or benefit.....	9
Designation of a drug, device or service as a benefit.....	10
List of benefits.....	11
Publication of benefit list.....	12
Minister may issue, conduct, evaluate or conclude requests.....	13
Agreements.....	14
Delegation by Minister.....	15
Committees.....	16
Designation of providers.....	17
Collection, use and disclosure of personal information.....	18
Minister may prescribe forms.....	19
Provider claim for benefits.....	20
Auditors.....	21
Examination of records.....	22
Deadlines for providing information to auditors.....	23
Administrator may audit, assess and investigate claims.....	24
Excess payments to provider.....	25
Referral to appeal panel.....	26
Decision is final.....	27
Offences and penalties.....	28
Limitation period.....	29
Offence by corporation.....	30
No liability attaches or action lies.....	31
Regulations.....	32
Regulation-making authority.....	33

Short title

1 This Act may be cited as the *Insured Prescription Drug Plan Act*, 2011, c. 7, s. 1.

Interpretation

2 In this Act,

“Administrator” means the body corporate that acts on behalf of the Minister and administers the Plan for the Minister;

“beneficiary” means a person who is enrolled as a member of a program pursuant to this Act and the regulations;

“benefit” means a drug, device or service designated by the Minister under this Act to which some level of coverage applies under a program;

“benefit period” means a period of time prescribed in the regulations in respect of the payment of a benefit;

“claim” means a claim for payment of a benefit;

“committee” means a committee established by the Minister under this Act;

“copayment” means the amount determined in accordance with the regulations that may be required to be paid by a beneficiary toward the cost of a benefit;

“deductible” means an amount determined in accordance with the regulations that may be required to be paid by a member toward the cost of a benefit before any benefit is paid;

“dependant” means a person who meets the criteria for dependants set out in the regulations;

“device” has the same meaning as in the *Food and Drugs Act* (Canada);

“drug” has the same meaning as in the *Food and Drugs Act* (Canada);

“formulary” means

(a) the list of drugs designated as interchangeable by the Minister under Section 9;

(b) the list of drugs, devices and services approved for sale by Health Canada but not designated by the Minister under Section 10;

(c) the list of benefits established by the Minister under Section 11; and

(d) the information with respect to criteria, standards, policies or guidelines for the Plan;

“Minister” means the Minister of Health and Wellness;

“Plan” means the Insured Prescription Drug Plan established by this Act;

“premium” means an amount of money payable to the Minister under this Act;

“prescriber” means a person authorized to prescribe a drug, device or service within the person’s regulated scope of practice;

“prescription” means a direction from a prescriber directing the dispensing of a drug, device or service or a mixture of drugs, devices or services for a specified person;

“program” means a program of benefits established by the Minister under the Plan;

“provider” means

(a) a pharmacy licensed under the *Pharmacy Act* that has confirmed agreement with the tariff between the Minister and the

Pharmacy Association of Nova Scotia and has been designated as a provider, or in a class of providers; and

(b) a supplier of drugs, devices or services that is not licensed as a pharmacy under the *Pharmacy Act* but is designated as a provider or in a class of providers;

“resident” has the same meaning as in the *Hospital Insurance Regulations*;

“service” means a treatment, care, service or activity related or incidental to the provision, sale, distribution, purchase or pricing of drugs or approved drugs;

“tariff” means payment to a provider for benefits established pursuant to subsection 14(2). 2011, c. 7, s. 2.

Insured Prescription Drug Plan

3 (1) An Insured Prescription Drug Plan is established under the administration of the Minister for the purpose of providing funding for, or providing, benefits.

(2) The Minister may establish programs under the Plan. 2011, c. 7, s. 3.

Insurance of Last Resort

4 Coverage under the Plan is insurance of last resort as provided by the regulations. 2011, c. 7, s. 4.

Persons not eligible for coverage

5 A person is not eligible for coverage of benefits under this Act if the person is entitled to benefits

- (a) under the *Workers' Compensation Act*;
- (b) from the Royal Canadian Mounted Police;
- (c) from the Department of National Defence;
- (d) from Veterans Affairs Canada;
- (e) under the non-insured health benefits for First Nations and Inuit Health;
- (f) under any other Act of the Legislature or the Parliament of Canada; or
- (g) under any statute of any jurisdiction either within or outside of Canada. 2011, c. 7, s. 5.

Persons eligible to be enrolled in program

6 (1) Subject to the regulations, the Minister may enrol as a beneficiary of a program any person who meets the eligibility and enrolment criteria set out in the regulations.

- (2) The Governor in Council may make regulations
- (a) respecting the eligibility and enrolment requirements that must be met for a person to become and remain a beneficiary of a program, including
 - (i) establishing different eligibility and enrolment requirements for different beneficiaries and classes of beneficiaries,
 - (ii) establishing exemptions from the eligibility and enrolment requirements for certain persons or classes of persons in the circumstances set out in the regulations, and
 - (iii) deeming certain persons or persons within certain classes of persons to be beneficiaries or to be eligible to be beneficiaries of a program;
 - (b) respecting the exclusion of certain persons or certain classes of persons from eligibility as beneficiaries of a program;
 - (c) respecting criteria for determining eligibility, including criteria respecting residency, assessment of income, fixed ineligibility periods and temporary absences;
 - (d) respecting the information that persons may be required to provide to the Minister for the purpose of assessing and verifying eligibility and enrolment;
 - (e) respecting the circumstances under which the Minister may refuse, suspend, vary or discontinue a beneficiary's enrolment;
 - (f) respecting the establishment of effective dates for eligibility and enrolment, and for refusal, suspension, variance and discontinuance of eligibility and enrolment, which may be different for different circumstances, beneficiaries and classes of beneficiaries.
- (3) The Minister may provide a beneficiary with proof of enrolment.
- (4) The Governor in Council may make regulations respecting the issuance to beneficiaries of proofs of enrolment and any rules, terms, restrictions or conditions respecting the proof of enrolment.
- (5) Subject to the regulations, a beneficiary shall notify the Minister of a change in circumstances affecting the beneficiary's eligibility or the eligibility of any of the beneficiary's dependants.
- (6) Participation by a beneficiary in a program is deemed to be consent by the beneficiary for the release of information required
- (a) to determine the person's eligibility for a program; and
 - (b) for audits under the program, including the release of copies of prescriptions. 2011, c. 7, s. 6.

Regulations

7

(1) The Governor in Council may make regulations

(a) respecting premiums that may be required to be paid by beneficiaries, including but not limited to establishing different rates and levels of premiums for different beneficiaries or classes of beneficiaries and providing that premiums may be applied retroactively;

(b) respecting times and methods of payment of premiums, including the collection and remittance of premiums, and to whom payments of premiums may be made on behalf of the Minister;

(c) respecting copayments that may be required to be paid by beneficiaries, including but not limited to establishing different rates and levels of copayments for different beneficiaries or classes of beneficiaries and providing that copayments may be applied retroactively;

(d) respecting deductibles that may be required to be paid by beneficiaries, including but not limited to establishing different rates and levels of deductibles for different beneficiaries or classes of beneficiaries and providing that deductibles may be applied retroactively;

(e) establishing copayments or deductibles that are applicable to benefits, including establishing different copayments or deductibles for different benefits or different classes of benefits;

(f) respecting the waiving of premiums, copayments and deductibles, including but not limited to establishing criteria for eligibility for waivers and providing that waivers may be applied retroactively;

(g) respecting dependants and family units, including establishing the criteria that must be met for a person to be considered a dependant or part of a family unit;

(h) respecting benefit periods that may apply to the eligibility or enrolment of beneficiaries or classes of beneficiaries, to premiums, copayments, deductibles or waivers or to benefits payable under this Act;

(i) respecting processes and criteria for the assessment and determination of whether a premium, copayment, deductible or waiver is applicable to a beneficiary or a class of beneficiaries, including but not limited to criteria relating to a beneficiary's income or financial situation;

(j) respecting the information a person may be required to provide to the Minister with respect to any matter under this Section;

(k) respecting penalties for unpaid premiums, deductibles and copayments.

(2) Subject to the regulations, where a beneficiary is required to pay a premium, the beneficiary is liable for and shall pay the premium to the Minister. 2011, c. 7, s. 7.

Payment of benefits by Minister

8 (1) Subject to the regulations, the Minister may pay benefits to or on behalf of beneficiaries and other persons.

(2) To be eligible for payment,

(a) a claim must contain all the information required by the Minister and be in a form required by the Minister;

(b) claims for benefits must be submitted within six months of the day on which the benefit giving rise to the claim was provided; and

(c) the date of a claim must not be more than one year from the original date of the prescription on which the claim for the benefit is based.

(3) All claims for benefits are subject to assessment and approval by the Minister, and the amount of benefits to be paid, the rules, terms, restrictions and conditions under which benefits may be paid and the person to whom benefits are to be paid must be determined in accordance with the conditions and maximum tariffs pursuant to subsection 14(2).

(4) Subject to the regulations, the Minister may

(a) restrict, refuse, suspend, vary or discontinue payment of benefits to or on behalf of a beneficiary or other person;

(b) coordinate payment of benefits with other insurers and other reimbursement programs;

(c) reassess or adjust claims;

(d) require a person to reimburse the Minister, in whole or in part, for any benefit paid;

(e) take any steps permitted by this Act or the regulations to recover an inadvertent or improper payment of a benefit; and

(f) establish processes for audits and investigations of beneficiary claims.

(5) The Minister may, in accordance with the regulations, require a beneficiary, provider or other person to provide information to the Minister as the Minister considers necessary for the purpose of this Section.

(6) Nothing in this Act or the regulations is to be construed so as to prevent a beneficiary or other person entitled to a benefit from assuming the responsibility for payment for a drug, device or service for which a benefit is payable if the member or other person so desires. 2011, c. 7, s. 8.

Interchangeability of a drug or benefit

9 (1) Subject to the regulations, the Minister may designate a drug to be interchangeable with one or more drugs or benefits.

(2) The Minister may amend the designation or modify or cancel the designation of interchangeability of a drug or benefit. 2011, c. 7, s. 9.

Designation of a drug, device or service as a benefit

10 (1) Subject to the regulations, the Minister may designate a drug, device or service as a benefit.

(2) The Minister's designation of a benefit may include

(a) assigning to the drug, device or service any attribute or distinction permitted by the regulations;

(b) classifying the drug, device or service as belonging to one or more classes or groups of benefits;

(c) determining whether the drug is interchangeable with other drugs;

(d) determining whether any rules, terms, restrictions or conditions apply to the benefit payable; and

(e) taking any other steps permitted by the regulations.

(3) The Minister may, as a condition of designating a benefit or continuing the designation of a benefit,

(a) require that a person enter into an agreement with the Minister in a form satisfactory to the Minister; and

(b) impose on any person any rules, terms, restrictions or conditions as prescribed in the regulations.

(4) Subject to the regulations, the Minister may amend, modify or cancel the designation of a benefit.

(5) A drug, device or service becomes a benefit on the effective date of its designation under subsection (1) and ceases to be a benefit on the effective date specified by the Minister.

(6) A modification of the designation of a benefit takes effect on the effective date specified by the Minister. 2011, c. 7, s. 10.

List of benefits

11 (1) The Minister may establish and maintain a list of benefits.

(2) The list must set out the benefits for the purpose of this Act, and may set out

(a) the classes, groups, attributes or other distinctions relating to the benefits;

(b) the amount payable for a benefit;

(c) criteria, standards, policies and guidelines respecting the benefits;

(d) the benefits that are designated as interchangeable with other benefits and drugs;

(e) whether any rules, terms, restrictions or conditions apply to a benefit or a class or group of benefits;

- (f) information or notices required in relation to the Plan;
and
- (g) any other information the Minister considers necessary or advisable.

(3) The list is not a guide for the prescribing of drugs, devices or services or the provision of treatment or care. 2011, c. 7, s. 11.

Publication of benefit list

12 (1) The Minister may publish the benefit list in a formulary or in any other form the Minister considers advisable.

(2) In the event of a conflict between published versions of the benefit list, the version posted electronically prevails. 2011, c. 7, s. 12.

Minister may issue, conduct, evaluate or conclude requests

13 The Minister may issue, conduct, evaluate or conclude requests for proposals, requests for expressions of interest, requests for information, requests for quotations, tenders or any similar activity in respect of

- (a) drugs, devices or services;
- (b) classes, group attributes or other attributes of drugs, devices or services; and
- (c) any other matter under this Act. 2011, c. 7, s. 13.

Agreements

14 (1) The Minister may enter into agreements with any person or government respecting

- (a) the provision, sale, distribution, purchase or pricing of drugs, devices or services;
- (b) rebates related to the provision, sale, distribution, purchase or pricing of drugs, devices or services;
- (c) services related to the administration and operation of the Plan; and
- (d) any other matter under this Act.

(2) Subject to the approval of the Governor in Council, the Minister may enter into agreements respecting conditions and maximum tariffs payable to providers for providing benefits to beneficiaries. 2011, c. 7, s. 14.

Delegation by Minister

15 The Minister may delegate any power, duty or function of the Minister under this Act or the regulations to any person the Minister considers appropriate. 2011, c. 7, s. 15.

Committees

16 (1) The Minister may establish any committees the Minister considers necessary or desirable in connection with any matters under this Act.

- (2) The Minister may, with respect to any committee,
- (a) appoint or provide for the manner of the appointment of its members;
 - (b) prescribe the term of office of any member;
 - (c) designate a chair, vice-chair and secretary; and
 - (d) authorize, fix or provide for the payment of remuneration and expenses to its members.

(3) A committee may exercise the powers and shall perform the duties and functions that the Minister approves or confers or imposes on it. 2011, c. 7, s. 16.

Designation of providers

17 (1) The Minister may designate persons as providers, or classes of persons as classes of providers, for the purpose of this Act and the regulations.

(2) The Governor in Council may make regulations respecting the activities of providers in relation to any matters under this Act, including but not limited to regulations

- (a) respecting the designation of providers or classes of providers;
- (b) requiring a provider or a class of provider to comply with any criteria, standards, policies and other guidelines specified by the Minister;
- (c) respecting the information that providers or classes of providers must provide to the Plan and beneficiaries;
- (d) respecting exempting specified providers or classes of providers from some or all of the requirements of this Act or the regulations;
- (e) imposing rules, terms, restrictions or conditions respecting rebates and professional allowances paid to providers in relation to benefits;
- (f) respecting processes for audits, investigations and appeals of provider claims;
- (g) respecting the constitution and powers of an appeal panel;
- (h) respecting the circumstances under which interest may be charged under subsection 24(5) and the rate at which that interest may be charged;
- (i) respecting the auditing techniques necessary to conduct audits.

(3) Except as authorized by the Plan, providers may not charge beneficiaries amounts in excess of the maximum tariffs established pursuant to subsection 14(2). 2011, c. 7, s. 17.

Collection, use and disclosure of personal information

18 (1) The Minister may directly or indirectly collect personal information, subject to such conditions as may be prescribed in the regulations, for purposes related to the administration of this Act or for such other purpose as may be prescribed in the regulations.

(2) The Minister may use personal information, subject to such conditions as may be prescribed in the regulations, for purposes related to the administration of this Act or for such other purpose as may be prescribed in the regulations.

(3) The Minister shall disclose personal information if all conditions prescribed in the regulations have been met and the disclosure is necessary for purposes related to the administration of this Act or for such other purpose as may be prescribed in the regulations, but shall not disclose the information if, in the Minister's opinion, the disclosure is not necessary for those purposes.

(4) Subject to such conditions as may be prescribed in the regulations, the Minister may enter into agreements to collect, use or disclose personal information for purposes related to the administration of this Act or for such other purpose as may be prescribed in the regulations.

(5) An agreement under subsection (4) must provide that personal information collected or disclosed under the agreement will be used only

(a) to verify the accuracy of information held or exchanged by a party to the agreement;

(b) to administer or enforce a law administered by a party to the agreement; and

(c) for a purpose prescribed by regulation under subsection (4).

(6) An agreement under subsection (4) must provide that personal information collected, used or disclosed under the agreement is confidential and establish mechanisms for maintaining the confidentiality of the information.

(7) Before disclosing personal information obtained under this Act or under an agreement, the person who obtained it shall delete from it all names and identifying numbers, symbols or other particulars assigned to individuals unless

(a) disclosure of the names or other identifying information is necessary for the purposes described in subsection (3) or (4); or

(b) disclosure of the names or other identifying information is otherwise authorized under the *Freedom of Information and Protection of Privacy Act*. 2011, c. 7, s. 18.

Minister may prescribe forms

19 The Minister may prescribe forms to be used for the purpose of this Act. 2011, c. 7, s. 19.

Provider claim for benefits

20 (1) A provider shall maintain patient or prescription records for all claims for benefits as required by this Act and the regulations.

(2) Every provider who makes a claim for benefits shall provide to the Administrator, upon the Administrator's request, the particulars of the claim and documentation to support the claim as required by this Act and the regulations.

(3) The Minister may require that a provider, prescriber or beneficiary supply further information to the Minister or the Administrator if the information is required to substantiate a claim. 2011, c. 7, s. 20.

Auditors

21 (1) The Minister may appoint auditors who are responsible for performing the duties and functions under this Section and Section 22.

(2) In order to determine compliance with the Plan, an audit may be performed under this Section and Section 22 to determine compliance with this Act, the regulations, policies and the terms and conditions of participation in the Plan.

(3) Audits performed under this Act must be performed according to generally accepted auditing standards and may be performed using techniques prescribed by the regulations that are considered necessary to complete audits according to the required standard. 2011, c. 7, s. 21.

Examination of records

22 (1) An auditor performing an audit may examine and copy those prescriptions, documents, papers and records that the auditor considers necessary to complete the audit in the manner required by this Act and the regulations.

(2) An examination of records referred to in subsection (1) includes electronic records, and an auditor may make a copy of those records, including electronic records, in a manner that the auditor considers necessary, including photocopying, scanning and electronic copying of data.

(3) Where reasonably necessary to determine compliance under this Act, an auditor or other person appointed or designated by the Minister under this Act may, at reasonable times, without a warrant, enter a provider's business premises to inspect the documents referred to in subsection (1).

(4) A provider shall provide the information required by an auditor under this Act in order to determine compliance with this Act and that information may be provided by mail, facsimile or electronic transmission.

(5) An examination of records required under Section 21 and this Section may include an examination of information, documentation or other records held by a provider regarding a beneficiary's insurer and any records of payment to that insurer or other method of obtaining coverage for the drugs or related products. 2011, c. 7, s. 21.

Deadlines for providing information to auditors

23 (1) The Minister may set deadlines for providing information to auditors acting under Sections 21 and 22.

(2) The time period set by the Minister under subsection (1) may be varied with the agreement of the parties. 2011, c. 7, s. 22.

Administrator may audit, assess and investigate claims

24 (1) The Administrator may audit, assess and investigate a provider's claim for benefits as prescribed in the regulations and shall determine the amounts payable for such claims in accordance with this Act and the regulations.

(2) Where, following an audit performed under this Act, it is determined that a payment has been made to a provider or a prescriber in excess of the amount that was required to be paid under the Plan, the excess amount is a debt due to the Crown in right of the Province.

(3) Amounts that are determined to have been paid in excess must be recovered in the manner prescribed by the regulations.

(4) Notwithstanding subsection (2), the Administrator may recover the amounts paid in excess in a different manner where there is an agreement with the provider to do so.

(5) The Administrator may charge interest on amounts paid in excess in the circumstances and at a rate prescribed by the regulations. 2011, c. 7, s. 23.

Excess payments to provider

25 Where it has been determined under Section 24 that excess payments have been made to a provider, the Administrator shall, in writing, notify the provider

(a) of the amount of the money paid in excess and the manner of calculating the amount;

(b) that the excess amount is a debt due to the Crown in right of the Province;

(c) that the amount may be recovered; and

(d) of the provider's right to an appeal under Section 26. 2011, c. 7, s. 24.

Referral to appeal panel

26 (1) Where the Administrator has completed an audit under Section 24 and has made a determination, a provider may refer the matter to an appeal panel pursuant to the regulations and the appeal panel shall make a decision in accordance with the regulations.

(2) A provider may further appeal the appeal panel's decision to the Minister. 2011, c. 7, s. 25.

Decision is final

27 Any decision made by the Minister in the exercise of the Minister's discretion under this Act or the regulations is final and conclusive and may not be set aside by any court unless the decision was made or the discretion was exercised in bad faith or for an improper purpose. 2011, c. 7, s. 26.

Offences and penalties

28 A person who

(a) on the person's own behalf or on behalf of another person, obtains or receives benefits to which that person or the other person is not entitled to obtain or receive under this Act or the regulations;

(b) provides false or misleading information or records pursuant to a requirement of this Act or the regulations to provide information or records;

(c) fails to provide information, answers or records as required by this Act or the regulations;

(d) aids or abets another person in applying for, obtaining or receiving any benefits under this Act that the person is not eligible for under this Act;

(e) contravenes an enforcement order; or

(f) contravenes or fails to comply with any provision of this Act or the regulations,

is guilty of an offence and liable on summary conviction to

(g) for a first offence, a fine not exceeding \$25,000; and

(h) for a second or subsequent offence, a fine not exceeding \$50,000. 2011, c. 7, s. 27.

Limitation period

29 A prosecution for an offence under this Act may not be commenced more than two years after the later of

(a) the date on which the alleged offence was committed; and

(b) six months after the date on which evidence of the offence first came to the attention of the Minister. 2011, c. 7, s. 28.

Offence by corporation

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

(2) For the purpose of this Act, an act or thing done or omitted to be done by a director, officer, official, employee or agent of a corporation in the course of that person's employment or in the exercise of that person's powers or the performance of that person's duties is deemed also to be an act or thing done or omitted to be done by the corporation. 2011, c. 7, s. 29.

No liability attaches or action lies

31 (1) No liability attaches to, and no action or proceeding may be brought against, the Crown in right of the Province, the Minister, an auditor, a member of a committee, an advisor or any person acting under the authority of the Minister for anything done or omitted to be done by any of them in good faith while exercising their powers and performing their duties under this Act.

(2) Notwithstanding any other enactment, and except as otherwise provided by the regulations,

(a) a member of a committee or an advisor acting under the authority of this Act may not be compelled as a witness, or required to testify, give evidence or produce any file, record, document, paper or information, respecting any matter under this Act; and

(b) any file, record, document, paper or information in the custody of any of the persons referred to in clause (a) may not be admitted in evidence in any proceedings. 2011, c. 7, s. 30.

Regulations

32 (1) The Governor in Council may make regulations respecting the establishment and administration of programs, including but not limited to the effective date of a program, the purpose of a program and the rules, terms, restrictions, conditions and exemptions that apply to a program.

(2) The Governor in Council may make regulations respecting the benefits payable under this Act, including but not limited to regulations

(a) establishing information that must be provided to the Minister in respect of matters under this subsection;

(b) imposing rules, terms, restrictions or conditions respecting the pricing and supply of a benefit and conditions of designating or continuing the designation of a benefit;

(c) determining whether the cost of a drug, device or service is covered in whole or in part;

(d) respecting the criteria and other factors that may or must be considered in establishing, modifying or discontinuing a benefit;

(e) respecting conditions that may be imposed on a person with respect to establishing and continuing a benefit;

(f) establishing different benefits or levels of benefits for different persons or classes of persons;

(g) respecting the circumstances in which the Minister may refuse, suspend, vary or discontinue payment of benefits.

(3) The Governor in Council may make regulations respecting the assessment, approval, reassessment and adjustment of claims and the payment of benefits, including but not limited to regulations

(a) establishing to whom and the manner in which benefits may be paid;

(b) establishing rules, terms, restrictions and conditions under which claims may be assessed, reassessed, adjusted and approved for payment of benefits;

(c) establishing rules, terms, restrictions and conditions for the coordination of assessment of claims and payment of benefits with insurers and other reimbursement programs;

(d) respecting reimbursement and recovery of inadvertent or improper payments of benefits;

(e) respecting the manner of recovering benefits under Section 24;

(f) respecting reciprocal arrangements with other provinces of Canada for the provision of benefits conferred under the Plan.

(4) The Governor in Council may make regulations

(a) respecting the process for designating a drug, device or service as a benefit and the information that must be provided to the Minister for that purpose;

(b) respecting the criteria that must or may be considered for the purpose of designating a drug as interchangeable with other drugs;

(c) prescribing conditions to be met by a drug or a manufacturer of a drug in order to be designated or continue to be designated as interchangeable with other drugs;

(d) respecting the contents of notices and the method of providing notices under this Act or the regulations;

(e) requiring a person to create or maintain records in relation to any matter under this Act or the regulations;

(f) respecting the provision of information to the Minister by a beneficiary, provider or other person;

(g) respecting conditions under which the Minister may collect, use or disclose personal information and for what purposes such information may be collected, used or disclosed;

(h) prescribing conditions under which the Minister may enter into agreements for the collection, use or disclosure of personal information under this Act;

(i) establishing conflict of interest rules for committee members;

(j) incorporating and adopting by reference, in whole or in part, a written standard, practice, rule, regulation, guideline, code or document as it reads on a prescribed day or as it is amended from time to time;

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

(l) further defining any word or expression defined in this Act;

(m) respecting any matter that the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Act. 2011, c. 7, s. 31.

Regulation-making authority

33 The exercise by the Governor in Council of the authority contained in subsections 6(2) and (4), 7(1) and 17(2) and Section 32 is a regulation within the meaning of the *Regulations Act*. 2011, c. 7, s. 32.

CHAPTER I-10

**An Act to Implement the Hague Convention
on Protection of Children and Co-operation
in Respect of Intercountry Adoption**

Table of Contents

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

	Section
Short title.....	1
Interpretation.....	2
Declaration.....	3
Consequences of extension of Convention to Province.....	4
Minister as Central Authority.....	5
Performance of functions of Central Authority.....	6
Accredited body.....	7
Action in Contracting State.....	8
Right of child to information.....	9
Publication of date of coming into force.....	10
Regulations.....	11
Schedule	

Short title

1 This Act may be cited as the *Intercountry Adoption Act*. 1998, c. 15, s. 1.

Interpretation

2 (1) In this Act,

“Convention” means the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption set out in the Schedule to this Act;

“Minister” means the Minister of Community Services.

(2) Words and expressions used in this Act have the same meaning as in the Convention. 1998, c. 15, s. 2.

Declaration

3 The Minister shall request the Government of Canada to declare, in accordance with Article 45 of the Convention, that the Convention extends to the Province. 1998, c. 15, s. 3.

Consequences of extension of Convention to Province

4 (1) On and after the date the Convention enters into force with respect to the Province, as determined by the Convention, the Convention is in force in the Province and the provisions of the Convention are law in the Province.

(2) The law of the Province applies, subject to the regulations, to an adoption to which the Convention applies but, where there is a conflict between the law of the Province and the Convention, the Convention prevails. 1998, c. 15, s. 4.

Minister as Central Authority

5 The Minister is the Central Authority for the Province for the purpose of the Convention. 1998, c. 15, s. 5.

Performance of functions of Central Authority

6 (1) Where the Minister so authorizes, the functions of a Central Authority under Chapter IV of the Convention may, to the extent determined by the Minister, be performed by public authorities or by bodies accredited under Chapter III of the Convention.

(2) Where the Minister so authorizes, the functions of a Central Authority under Articles 15 to 21 of the Convention may, to the extent determined by the Minister, be performed by a person or body who meets the requirements of Article 22, sub-paragraphs 2a and b, of the Convention. 1998, c. 15, s. 6.

Accredited body

7 Where the Minister so authorizes, a body accredited in a Contracting State may act in the Province. 1998, c. 15, s. 7.

Action in Contracting State

8 The Minister may authorize a body accredited in the Province to act in a Contracting State. 1998, c. 15, s. 8.

Right of child to information

9 Subject to the regulations, a child adopted in accordance with the Convention has, to the extent permitted by this or any other Act, a right of access to information concerning the child's origin that is held in the Province. 1998, c. 15, s. 9.

Publication of date of coming into force

10 The Minister shall publish in the Royal Gazette the date the Convention comes into force in the Province. 1998, c. 15, s. 10.

Regulations

- 11 (1) The Governor in Council may make regulations
- (a) limiting or varying the application of the law of the Province to an adoption in the Province to which the Convention applies;
 - (b) designating the competent authority for any provision of the Convention;
 - (c) respecting the release of information concerning the origin of a child who is adopted pursuant to this Act;
 - (d) respecting forms to be used for the purpose of this Act;

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

(f) respecting any matter 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*, 1998, c. 15, s. 11.

SCHEDULE

CONVENTION ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION

The States signatory to the present Convention,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Recalling that each State should take, as a matter of priority, appropriate measures to enable the child to remain in the care of his or her family of origin,

Recognizing that intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State of origin,

Convinced of the necessity to take measures to ensure that intercountry adoptions are made in the best interests of the child and with respect for his or her fundamental rights, and to prevent the abduction, the sale of, or traffic in children,

Desiring to establish common provisions to this effect, taking into account the principles set forth in international instruments, in particular the United Nations Convention on the Rights of the Child, of 20 November 1989, and the United Nations Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally (General Assembly Resolution 41/85, of 3 December 1986),

Have agreed upon the following provisions —

CHAPTER I — SCOPE OF THE CONVENTION

Article 1

The objects of the present Convention are —

a to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognized in international law;

b to establish a system of co-operation amongst Contracting States to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children;

c to secure the recognition in Contracting States of adoptions made in accordance with the Convention.

Article 2

1 The Convention shall apply where a child habitually resident in one Contracting State (“the State of origin”) has been, is being, or is to be moved to another Contracting State (“the receiving State”) either after his or her adoption in the State of origin by spouses or a person habitually resident in the receiving State, or for the purposes of such an adoption in the receiving State or in the State of origin.

2 The Convention covers only adoptions which create a permanent parent-child relationship.

Article 3

The Convention ceases to apply if the agreements mentioned in Article 17, sub-paragraph c, have not been given before the child attains the age of eighteen years.

CHAPTER II — REQUIREMENTS FOR INTERCOUNTRY ADOPTIONS

Article 4

An adoption within the scope of the Convention shall take place only if the competent authorities of the State of origin —

- a have established that the child is adoptable;
- b have determined, after possibilities for placement of the child within the State of origin have been given due consideration, that an intercountry adoption is in the child's best interests;
- c have ensured that
 - (1) the persons, institutions and authorities whose consent is necessary for adoption, have been counselled as may be necessary and duly informed of the effects of their consent, in particular whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin,
 - (2) such persons, institutions and authorities have given their consent freely, in the required legal form, and expressed or evidenced in writing,
 - (3) the consents have not been induced by payment or compensation of any kind and have not been withdrawn, and
 - (4) the consent of the mother, where required, has been given only after the birth of the child; and
- d have ensured, having regard to the age and degree of maturity of the child, that
 - (1) he or she has been counselled and duly informed of the effects of the adoption and of his or her consent to the adoption, where such consent is required,
 - (2) consideration has been given to the child's wishes and opinions,
 - (3) the child's consent to the adoption, where such consent is required, has been given freely, in the required legal form, and expressed or evidenced in writing, and
 - (4) such consent has not been induced by payment or compensation of any kind.

Article 5

An adoption within the scope of the Convention shall take place only if the competent authorities of the receiving State —

- a have determined that the prospective adoptive parents are eligible and suited to adopt;
- b have ensured that the prospective adoptive parents have been counselled as may be necessary; and
- c have determined that the child is or will be authorized to enter and reside permanently in that State.

CHAPTER III — CENTRAL AUTHORITIES AND ACCREDITED BODIES

Article 6

1 A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.

2 Federal States, States with more than one system of law or States having autonomous territorial units shall be free to appoint more than one Central Authority and to specify the territorial or personal extent of their functions. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for transmission to the appropriate Central Authority within that State.

Article 7

1 Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their States to protect children and to achieve the other objects of the Convention.

2 They shall take directly all appropriate measures to —

a provide information as to the laws of their States concerning adoption and other general information, such as statistics and standard forms;

b keep one another informed about the operation of the Convention and, as far as possible, eliminate any obstacles to its application.

Article 8

Central Authorities shall take, directly or through public authorities, all appropriate measures to prevent improper financial or other gain in connection with an adoption and to deter all practices contrary to the objects of the Convention.

Article 9

Central Authorities shall take, directly or through public authorities or other bodies duly accredited in their State, all appropriate measures, in particular to —

a collect, preserve and exchange information about the situation of the child and the prospective adoptive parents, so far as is necessary to complete the adoption;

b facilitate, follow and expedite proceedings with a view to obtaining the adoption;

c promote the development of adoption counselling and post-adoption services in their States;

d provide each other with general evaluation reports about experience with intercountry adoption;

e reply, in so far as is permitted by the law of their State, to justified requests from other Central Authorities or public authorities for information about a particular adoption situation.

Article 10

Accreditation shall only be granted to and maintained by bodies demonstrating their competence to carry out properly the tasks with which they may be entrusted.

Article 11

An accredited body shall —

a pursue only non-profit objectives according to such conditions and within such limits as may be established by the competent authorities of the State of accreditation;

b be directed and staffed by persons qualified by their ethical standards and by training or experience to work in the field of intercountry adoption; and

c be subject to supervision by competent authorities of that State as to its composition, operation and financial situation.

Article 12

A body accredited in one Contracting State may act in another Contracting State only if the competent authorities of both States have authorized it to do so.

Article 13

The designation of the Central Authorities and, where appropriate, the extent of their functions, as well as the names and addresses of the accredited bodies shall be communicated by each Contracting State to the Permanent Bureau of the Hague Conference on Private International Law.

CHAPTER IV — PROCEDURAL REQUIREMENTS IN INTERCOUNTRY ADOPTION

Article 14

Persons habitually resident in a Contracting State, who wish to adopt a child habitually resident in another Contracting State, shall apply to the Central Authority in the State of their habitual residence.

Article 15

1 If the Central Authority of the receiving State is satisfied that the applicants are eligible and suited to adopt, it shall prepare a report including information about their identity, eligibility and suitability to adopt, background, family and medical history, social environment, reasons for adoption, ability to undertake an intercountry adoption, as well as the characteristics of the children for whom they would be qualified to care.

2 It shall transmit the report to the Central Authority of the State of origin.

Article 16

1 If the Central Authority of the State of origin is satisfied that the child is adoptable, it shall —

a prepare a report including information about his or her identity, adoptability, background, social environment, family history, medical history including that of the child's family, and any special needs of the child;

b give due consideration to the child's upbringing and to his or her ethnic, religious and cultural background;

c ensure that consents have been obtained in accordance with Article 4;
and

d determine, on the basis in particular of the reports relating to the child and the prospective adoptive parents, whether the envisaged placement is in the best interests of the child.

2 It shall transmit to the Central Authority of the receiving State its report on the child, proof that the necessary consents have been obtained and the reasons for its determination on the placement, taking care not to reveal the identity of the mother and the father if, in the State of origin, these identities may not be disclosed.

Article 17

Any decision in the State of origin that a child should be entrusted to prospective adoptive parents may only be made if —

a the Central Authority of that State has ensured that the prospective adoptive parents agree;

b the Central Authority of the receiving State has approved such decision, where such approval is required by the law of that State or by the Central Authority of the State of origin;

c the Central Authorities of both States have agreed that the adoption may proceed; and

d it has been determined, in accordance with Article 5, that the prospective adoptive parents are eligible and suited to adopt and that the child is or will be authorized to enter and reside permanently in the receiving State.

Article 18

The Central Authorities of both States shall take all necessary steps to obtain permission for the child to leave the State of origin and to enter and reside permanently in the receiving State.

Article 19

1 The transfer of the child to the receiving State may only be carried out if the requirements of Article 17 have been satisfied.

2 The Central Authorities of both States shall ensure that this transfer takes place in secure and appropriate circumstances and, if possible, in the company of the adoptive or prospective adoptive parents.

3 If the transfer of the child does not take place, the reports referred to in Articles 15 and 16 are to be sent back to the authorities who forwarded them.

Article 20

The Central Authorities shall keep each other informed about the adoption process and the measures taken to complete it, as well as about the progress of the placement if a probationary period is required.

Article 21

1 Where the adoption is to take place after the transfer of the child to the receiving State and it appears to the Central Authority of that State that the continued placement of the child with the prospective adoptive parents is not in the child's best interests, such Central Authority shall take the measures necessary to protect the child, in particular —

a to cause the child to be withdrawn from the prospective adoptive parents and to arrange temporary care;

b in consultation with the Central Authority of the State of origin, to arrange without delay a new placement of the child with a view to adoption or, if this is not appropriate, to arrange alternative long-term care; an adoption shall not take place until the Central Authority of the State of origin has been duly informed concerning the new prospective adoptive parents;

c as a last resort, to arrange the return of the child, if his or her interests so require.

2 Having regard in particular to the age and degree of maturity of the child, he or she shall be consulted and, where appropriate, his or her consent obtained in relation to measures to be taken under this Article.

Article 22

1 The functions of a Central Authority under this Chapter may be performed by public authorities or by bodies accredited under Chapter III, to the extent permitted by the law of its State.

2 Any Contracting State may declare to the depositary of the Convention that the functions of the Central Authority under Articles 15 to 21 may be performed in that State, to the extent permitted by the law and subject to the supervision of the competent authorities of that State, also by bodies or persons who —

a meet the requirements of integrity, professional competence, experience and accountability of that State; and

b are qualified by their ethical standards and by training or experience to work in the field of intercountry adoption.

3 A Contracting State which makes the declaration provided for in paragraph 2 shall keep the Permanent Bureau of the Hague Conference on Private International Law informed of the names and addresses of these bodies and persons.

4 Any Contracting State may declare to the depositary of the Convention that adoptions of children habitually resident in its territory may only take place if the functions of the Central Authorities are performed in accordance with paragraph 1.

5 Notwithstanding any declaration made under paragraph 2, the reports provided for in Articles 15 and 16 shall, in every case, be prepared under the responsibility of the Central Authority or other authorities or bodies in accordance with paragraph 1.

CHAPTER V — RECOGNITION AND EFFECTS OF THE ADOPTION

Article 23

1 An adoption certified by the competent authority of the State of the adoption as having been made in accordance with the Convention shall be recognized by operation of law in the other Contracting States. The certificate shall specify when and by whom the agreements under Article 17, sub-paragraph c, were given.

2 Each Contracting State shall, at the time of signature, ratification, acceptance, approval or accession, notify the depositary of the Convention of the identity and the functions of the authority or the authorities which, in that State, are competent to make the certification. It shall also notify the depositary of any modification in the designation of these authorities.

Article 24

The recognition of an adoption may be refused in a Contracting State only if the adoption is manifestly contrary to its public policy, taking into account the best interests of the child.

Article 25

Any Contracting State may declare to the depositary of the Convention that it will not be bound under this Convention to recognize adoptions made in accordance with an agreement concluded by application of Article 39, paragraph 2.

Article 26

- 1 The recognition of an adoption includes recognition of
- a the legal parent-child relationship between the child and his or her adoptive parents;
 - b parental responsibility of the adoptive parents for the child;
 - c the termination of a pre-existing legal relationship between the child and his or her mother and father, if the adoption has this effect in the Contracting State where it was made.

2 In the case of an adoption having the effect of terminating a pre-existing legal parent-child relationship, the child shall enjoy in the receiving State, and in any other Contracting State where the adoption is recognized, rights equivalent to those resulting from adoptions having this effect in each such State.

3 The preceding paragraphs shall not prejudice the application of any provision more favourable for the child, in force in the Contracting State which recognizes the adoption.

Article 27

1 Where an adoption granted in the State of origin does not have the effect of terminating a pre-existing legal parent-child relationship, it may, in the receiving State which

recognizes the adoption under the Convention, be converted into an adoption having such an effect —

- a if the law of the receiving State so permits; and
 - b if the consents referred to in Article 4, sub-paragraphs c and d, have been or are given for the purpose of such an adoption.
- 2 Article 23 applies to the decision converting the adoption.

CHAPTER VI — GENERAL PROVISIONS

Article 28

The Convention does not affect any law of a State of origin which requires that the adoption of a child habitually resident within that State take place in that State or which prohibits the child's placement in, or transfer to, the receiving State prior to adoption.

Article 29

There shall be no contact between the prospective adoptive parents and the child's parents or any other person who has care of the child until the requirements of Article 4, sub-paragraphs a to c, and Article 5, sub-paragraph a, have been met, unless the adoption takes place within a family or unless the contact is in compliance with the conditions established by the competent authority of the State of origin.

Article 30

1 The competent authorities of a Contracting State shall ensure that information held by them concerning the child's origin, in particular information concerning the identity of his or her parents, as well as the medical history, is preserved.

2 They shall ensure that the child or his or her representative has access to such information, under appropriate guidance, in so far as is permitted by the law of that State.

Article 31

Without prejudice to Article 30, personal data gathered or transmitted under the Convention, especially data referred to in Articles 15 and 16, shall be used only for the purposes for which they were gathered or transmitted.

Article 32

1 No one shall derive improper financial or other gain from an activity related to an intercountry adoption.

2 Only costs and expenses, including reasonable professional fees of persons involved in the adoption, may be charged or paid.

3 The directors, administrators and employees of bodies involved in an adoption shall not receive remuneration which is unreasonably high in relation to services rendered.

Article 33

A competent authority which finds that any provision of the Convention has not been respected or that there is a serious risk that it may not be respected, shall immediately inform the Central Authority of its State. This Central Authority shall be responsible for ensuring that appropriate measures are taken.

Article 34

If the competent authority of the State of destination of a document so requests, a translation certified as being in conformity with the original must be furnished. Unless otherwise provided, the costs of such translation are to be borne by the prospective adoptive parents.

Article 35

The competent authorities of the Contracting States shall act expeditiously in the process of adoption.

Article 36

In relation to a State which has two or more systems of law with regard to adoption applicable in different territorial units —

a any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;

b any reference to the law of that State shall be construed as referring to the law in force in the relevant territorial unit;

c any reference to the competent authorities or to the public authorities of that State shall be construed as referring to those authorized to act in the relevant territorial unit;

d any reference to the accredited bodies of that State shall be construed as referring to bodies accredited in the relevant territorial unit.

Article 37

In relation to a State which with regard to adoption has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

Article 38

A State within which different territorial units have their own rules of law in respect of adoption shall not be bound to apply the Convention where a State with a unified system of law would not be bound to do so.

Article 39

1 The Convention does not affect any international instrument to which Contracting States are Parties and which contains provisions on matters governed by the Convention, unless a contrary declaration is made by the States Parties to such instrument.

2 Any Contracting State may enter into agreements with one or more of the Contracting States, with a view to improving the application of the Convention in their mutual relations. These agreements may derogate only from the provisions of Articles 14 to 16 and 18 to 21. The States which have concluded such an agreement shall transmit a copy to the depositary of the Convention.

Article 40

No reservation to the Convention shall be permitted.

Article 41

The Convention shall apply in every case where an application pursuant to Article 14 has been received after the Convention has entered into force in the receiving State and the State of origin.

Article 42

The Secretary General of the Hague Conference on Private International Law shall at regular intervals convene a Special Commission in order to review the practical operation of the Convention.

CHAPTER VII — FINAL CLAUSES

Article 43

1 The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Seventeenth Session and by the other States which participated in that Session.

2 It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention.

Article 44

1 Any other State may accede to the Convention after it has entered into force in accordance with Article 46, paragraph 1.

2 The instrument of accession shall be deposited with the depositary.

3 Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the six months after the receipt of the notification referred to in sub-paragraph b of Article 48. Such an objection may also be raised by States at the time when they ratify, accept or approve the Convention after an accession. Any such objection shall be notified to the depositary.

Article 45

1 If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in the Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

2 Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.

3 If a State makes no declaration under this Article, the Convention is to extend to all territorial units of that State.

Article 46

1 The Convention shall enter into force on the first day of the month following the expiration of three months after the deposit of the third instrument of ratification, acceptance or approval referred to in Article 43.

2 Thereafter the Convention shall enter into force —

a for each State ratifying, accepting or approving it subsequently, or acceding to it, on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance, approval or accession;

b for a territorial unit to which the Convention has been extended in conformity with Article 45, on the first day of the month following the expiration of three months after the notification referred to in that Article.

Article 47

1 A State Party to the Convention may denounce it by a notification in writing addressed to the depositary.

2 The denunciation takes effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

Article 48

The depositary shall notify the States Members of the Hague Conference on Private International Law, the other States which participated in the Seventeenth Session and the States which have acceded in accordance with Article 44, of the following —

- a the signatures, ratifications, acceptances and approvals referred to Article 43;
- b the accessions and objections raised to accessions referred to in Article 44;
- c the date on which the Convention enters into force in accordance with Article 46;
- d the declarations and designations referred to in Articles 22, 23, 25 and 45;
- e the agreements referred to Article 39;
- f the denunciations referred to in Article 47.

In witness whereof the undersigned, being duly authorized thereto, have signed this Convention.

Done at The Hague, on the day of 19 , in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Seventeenth Session and to each of the other States which participated in that Session.

1998, c. 15, Sch.



CHAPTER I-11

**An Act Respecting
Interest on Judgment Debts**

Table of Contents

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

	Section
Short title.....	1
Prescribed Interest.....	2
Calculation of interest.....	3
Deemed judgment debt.....	4
Existing judgment debt.....	5

Short title

1 This Act may be cited as the *Interest on Judgments Act*. R.S., c. 233, s. 1.

Prescribed Interest

2 (1) Until it is satisfied, every judgment debt bears interest at the rate of five per cent per year or, where another rate is prescribed pursuant to subsection (2), at that other rate.

(2) The Governor in Council may make regulations

(a) determining rates of interest on judgment debts, including judgment debts which were, on June 1, 1983, unsatisfied in whole or in part;

(b) respecting the method and frequency of determining the rates of interest;

(c) fixing the periods during which the rates of interest are in effect.

(3) The exercise of the authority contained in subsection (2) is a regulation within the meaning of the *Regulations Act*. R.S., c. 233, s. 2.

Calculation of interest

3 Unless it is otherwise ordered by the court such interest must be calculated from the time of the rendering of the verdict or of the giving of the judgment, as the case may be, notwithstanding that the entry of judgment upon the verdict or upon the giving of the judgment has been suspended by any proceedings either in the same court or on appeal. R.S., c. 233, s. 3.

Deemed judgment debt

4 Any sum of money or any costs, charges or expenses made payable by or under any judgment, decree, rule or order of any court whatsoever in any civil

proceeding is for the purpose of this Act deemed to be a judgment debt. R.S., c. 233, s. 4.

Existing judgment debt

5 Every judgment debt unsatisfied in whole or in part on May 17, 1919, is declared to have borne interest at the rate of five per cent per year, such interest to be calculated from the time mentioned in Section 3 and such judgment debt continues to bear interest as provided in this Act until it is satisfied. R.S., c. 233, s. 5.

CHAPTER I-12

An Act to Implement an Interim Residential Rental Increase Cap

Table of Contents

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

	Section
Short title.....	1
Interpretation.....	2
Application of Act.....	3
Maximum increase of rent	4
Application to Director	5
Regulations.....	6
Effective date	7

Short title

1 This Act may be cited as the *Interim Residential Rental Increase Cap Act*. 2021, c. 22, s. 1.

Interpretation

2 Words and expressions used in this Act have the same meaning as in the *Residential Tenancies Act*. 2021, c. 22, s. 2.

Application of Act

3 (1) Subject to subsections (2) and (3), this Act applies to rental increases respecting all residential premises.

(2) This Act does not apply to rental increases for tenants in a public housing program in which the amount of the tenant’s rent is increased solely on the basis of an increase in the tenant’s income.

(3) This Act does not apply to rental increases in a land-lease community that comply with Section 49 of the *Residential Tenancies Act*. 2021, c. 22, s. 3.

Maximum increase of rent

4 (1) In addition to the restrictions on increasing rent in Section 47 of the *Residential Tenancies Act*, a landlord shall not increase the rent payable by an existing tenant by more than

- (a) until and including December 31, 2023, two per cent;
- (b) from January 1, 2024, to December 31, 2024, inclusive, the amount permitted by the regulations;
- (c) from January 1, 2025, to December 31, 2025, inclusive, the amount permitted by the regulations,

above the amount that the tenant was legally required to pay in the preceding 12-month period.

(2) For greater certainty, subsection (1) applies if a landlord enters into a new fixed-term lease with an existing tenant for the same residential premises. 2021, c. 22, s. 4; 2023, c. 7, s. 1.

Application to Director

5 (1) Where a tenant believes that a landlord has imposed a rental increase in contravention of this Act, the tenant may make an application to the Director of Residential Tenancies in accordance with Section 53 of the *Residential Tenancies Act* for an order requiring the landlord to reimburse the tenant for any amount of rent collected in contravention of this Act.

(2) Sections 56 to 63 of the *Residential Tenancies Act* apply with necessary changes to an application made under subsection (1). 2021, c. 22, s. 5.

Regulations

6 (1) The Governor in Council may make regulations determining the maximum permitted rent increase or the manner of determining the maximum permitted rent increase for each of the periods referred to in clauses 4(1)(b) and (c).

(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*. 2023, c. 7, s. 2.

Effective date

7 (1) This Act, except Section 5, expires and ceases to have any force or effect after December 31, 2025.

(2) Section 5 of this Act expires and ceases to have any force or effect after December 31, 2026. 2021, c. 22, s. 7; 2023, c. 7, s. 3.

CHAPTER I-13

An Act Respecting Interior Designers

Table of Contents

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

	Section
Short title.....	1
Interpretation.....	2
Application.....	3
Rights of members.....	4
Association and Board	
Association continued.....	5
Objects.....	6
Powers.....	7
Annual meeting.....	8
Board.....	9
Quorum.....	10
Powers of Board.....	11
Auditor.....	12
Registration and Prohibitions	
Registrar.....	13
Register.....	14
Membership.....	15
Practise of interior design.....	16
Prohibition on receipt of fee, reward or remuneration.....	17
Seal and signature.....	18
Restriction on use of title.....	19
Prohibition on practise.....	20
Offence.....	21
Discipline	
Conduct of members.....	22
Complaint.....	23
Complaints committee.....	24
Hearing committee.....	25
Hearing.....	26
Decisions of committees.....	27
Powers of committees.....	28
Continuation of jurisdiction and authority.....	29
General, Appeals and Penalty	
Seals.....	30
Technical submissions.....	31
Appeals.....	32
Powers of Court.....	33
No action lies.....	34
Proof of practice.....	35
Injunction.....	36
Offence and penalty.....	37
Informations.....	38
Separate offence.....	39
Fines and penalties.....	40

Bylaws and Regulations

Bylaws 41
Approval of bylaws..... 42
Regulations 43

Transitional

Continuation of proceedings..... 44
Continuation of bylaws..... 45

Short title

1 This Act may be cited as the *Interior Designers Act*. 2003, c. 6, s. 1.

Interpretation

2 In this Act,

“Association” means the Association of Interior Designers of Nova Scotia;

“Board” means the Board of Directors of the Association;

“Court” means the Nova Scotia Court of Appeal;

“former Act” means Chapter 14 of the Acts of 1990, the *Interior Designers Association Act*;

“Non-resident Registered Class” means the class of membership in which a person

- (a) is entitled to practise interior design;
- (b) is not a permanent resident of the Province; and
- (c) meets the requirements set out for this class of member of the Association in the regulations;

“non-structural” means interior elements or components of a structure that are not load-bearing and do not require design computations for a building structure, and includes ceiling and partition systems that employ normal and typical bracing conventions and are not part of the structural integrity of a building but does not include the structural frame systems supporting a building;

“partition” means a wall that does not support a vertical load of a structure other than its own weight and does not extend further than from the floor of an interior area to the structure above;

“practice of interior design” means providing or offering to provide, for a fee, commission or hope of reward, design services in relation to the non-structural construction of and non-structural alterations to the interior area of a structure designed for human habitation and includes

- (a) analyzing the intended use of the interior area of a structure, the life-safety requirements and applicable codes;
- (b) developing preliminary and final designs for the alteration or construction of an interior area of a structure;

(c) preparing and filing with the authority having jurisdiction for the purpose of obtaining a building permit, technical submissions for non-structural interior construction, materials, finishes, space planning, reflected ceiling plans, furnishings, fixtures and equipment;

(d) consulting and collaborating with licensed design professionals;

(e) preparing and administering bids and contract documents; and

(f) reviewing and evaluating the implementation of projects while in progress and upon completion;

“Register” means the register of members of the Association established under this Act;

“Registered Class” means the class of membership in which a member is entitled to practise interior design and meets the requirements set out for this class of member of the Association in the regulations;

“Registrar” means, unless the context otherwise requires, the Registrar appointed under this Act;

“supervision” means the examination and review of the content of technical submissions during their preparation and in the practice of interior design with the ability to exercise control over changes to that work so as to ensure that they meet the standards required of a member of the Association authorized to practise interior design;

“technical submissions” means designs, drawings, plans, specifications, studies and other technical reports. 2003, c. 6, s. 2; 2004, c. 6, s. 11.

Application

3 (1) This Act does not apply to the practice of interior design, the holding out of entitlement to practise interior design or the use of the title “interior designer” by an architect, partnership, association of persons or body corporate entitled under the *Architects Act* to practise architecture or a person employed by and acting under the supervision and direction of an architect, partnership, association or body corporate while practising architecture within the meaning of the *Architects Act*.

(2) In subsection (3), unless the context otherwise requires,

“assembly occupancy” means the occupancy or the use of a building, or part thereof, by a gathering of persons for civic, political, travel, religious, social, educational, recreational or like purposes, or for the consumption of food or drink;

“building area” means the greatest horizontal area of a building above grade within the outside surface of exterior walls or within the outside surface of exterior walls and the centre line of firewalls;

“building height” in storeys, means the number of storeys contained between the roof and the floor of the first storey;

“business and personal services occupancy” means the occupancy or use of a building, or part thereof, for the transaction of busi-

ness or the rendering or receiving of professional or personal services;

“high hazard industrial occupancy” means an industrial occupancy containing sufficient quantities of highly combustible and flammable or explosive materials that, because of their inherent characteristics, constitute a special fire hazard;

“low hazard industrial occupancy” means an industrial occupancy in which the combustible content is not more than 50 kilograms per square metre or 1,200 megajoules per square metre of floor area;

“medium hazard industrial occupancy” means an industrial occupancy in which the combustible content is more than 50 kilograms per square metre or 1,200 megajoules per square metre of floor area and not classified as high hazard industrial occupancy;

“mercantile occupancy” means the occupancy or use of a building, or part thereof, for the displaying or selling of retail goods, wares or merchandise;

“residential occupancy” means the occupancy or use of a building, or part thereof, by persons for whom sleeping accommodation is provided but who are not harboured or detained to receive medical care or treatment or are not involuntarily detained.

(3) Subject to Section 19, this Act does not apply to

(a) an engineer, partnership, association of persons or body corporate entitled under the *Engineering Profession Act* to practise or undertake the application of engineering or a person employed by and acting under the supervision and direction of an engineer, partnership, association or body corporate while applying engineering within the meaning of the *Engineering Profession Act*;

(b) the practice of interior design by any person where the alterations to a structure do not require a permit under the applicable codes;

(c) the service of selection or assistance in selection of surface materials, window treatments, wall coverings, paints, floor coverings, surface-mounted fixtures and loose furnishings not subject to the *Building Code Act*;

(d) an employee of a retail establishment providing consultation with respect to interior decoration or furnishings on the premises of the retail establishment or in furtherance of a retail sale; or

(e) the practice of interior design by persons other than members of the Association in the Registered Class or in the Non-resident Registered Class in connection with a building as constructed, enlarged or altered, and used for one or more of the following occupancies, unless a member of the Association in the Registered Class or in the Non-resident Registered Class is otherwise required by law or by the building authority having jurisdiction over the project:

(i) a one-dwelling or two-dwelling unit,

(ii) of three storeys or fewer in building height, having a building area not exceeding 450 square metres classified as

- (A) residential occupancy,
- (B) business and personal services occupancy,
- (C) mercantile occupancy, or
- (D) low and medium hazard industrial occupancy,

(iii) an assembly occupancy of not more than one storey in building height, having a building area of not more than 200 square metres, or

(iv) a high hazard industrial occupancy of not more than one storey in building height, having a building area of not more than 200 square metres.

(3) For greater certainty, this Act does not apply to servants of the Crown in right of Canada or the Province. 2003, c. 6, s. 3; 2011, c. 18, s. 1.

Rights of members

4 Notwithstanding any Act or regulations respecting the practice of architecture in the Province,

(a) a member of the Association in the Registered Class or in the Non-resident Registered Class may practise interior design or purport to be entitled to practise interior design and collect a fee, reward or remuneration for services rendered;

(b) an individual who is registered as a member of the Association may carry out work under the supervision of a member of the Association in the Registered Class or Non-resident Registered Class or may carry out work on technical submissions for a member of the Association in the Registered Class or Non-resident Registered Class; and

(c) a person who is not registered as a member of the Association or a partnership, association of persons or a corporation may carry out work under the supervision of a member of the Association in the Registered Class or Non-resident Registered Class or may carry out work on technical submissions for a member of the Association in the Registered Class or Non-resident Registered Class. 2003, c. 6, s. 4.

ASSOCIATION AND BOARD

Association continued

5 The Association is continued as a body corporate under the name “Association of Interior Designers of Nova Scotia” and has the capacity, rights, powers and privileges of a natural person. 2003, c. 6, s. 5.

Objects

6 The objects of the Association are to

- (a) regulate the practice of interior design and govern its members;
- (b) develop, establish and maintain standards of knowledge and skill among its members;
- (c) develop, establish and maintain standards of qualification and practice for the practice of interior design;
- (d) develop, establish and maintain standards of professional ethics among its members;
- (e) develop, establish and maintain standards of continuing education for its members;
- (f) communicate and co-operate with other professional organizations for the advancement of the practice of interior design;
- (g) promote public awareness of the role of the Association and the practice of interior design; and
- (h) do such things as are necessary for or conducive to the advancement of interior design in the Province. 2003, c. 6, s. 6.

Powers

7 The Association may exercise the powers that are necessary or incidental to achieve its objects and carry out its obligations and, without restricting the generality of the foregoing, may

- (a) purchase, lease, acquire, hold, sell, mortgage, hypothecate 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 the agents, employees and professional or other assistance it considers necessary;
- (d) spend the money of the Association to advance the objects of this Act;
- (e) establish and maintain the offices and agencies it determines are necessary;
- (f) invest the money of the Association;
- (g) borrow money for the use of the Association;
- (h) issue bonds, debentures, debenture stock and other securities and pledge or sell securities. 2003, c. 6, s. 7.

Annual meeting

8 The Association shall hold an annual meeting in the manner and at the time and place set out in the bylaws. 2003, c. 6, s. 8.

Board

- 9 (1) A Board is established consisting of

(a) not fewer than eight members of the Association elected in accordance with the bylaws; and

(b) at least one and not more than two members appointed by the Governor in Council, who are not members of the Association.

(2) The members of the Board hold office for a term not exceeding two years, as set out in the bylaws. 2003, c. 6, s. 9.

Quorum

10 Five members of the Board constitute a quorum. 2003, c. 6, s. 10.

Powers of Board

11 The Board shall manage and conduct the business and affairs of the Association and exercise the powers of the Association. 2003, c. 6, s. 11.

Auditor

12 (1) The Board shall, subject to the approval of the Association at the annual meeting, recommend an auditor.

(2) The Association shall, at or before the annual meeting, distribute for review by the membership an annual report that includes a report by an auditor. 2003, c. 6, s. 12.

REGISTRATION AND PROHIBITIONS

Registrar

13 The Board shall appoint a Registrar to hold office on such terms and conditions and for such remuneration as is determined by the Board. 2003, c. 6, s. 13.

Register

14 The Registrar shall maintain a Register in which is entered the name and class of membership of every person who is a member of the Association and shall issue to every member of the Association a certificate of membership. 2003, c. 6, s. 14.

Membership

15 (1) Any individual may apply to the Registrar to become a member of the Association.

(2) The Registrar, or any person designated in the regulations, shall, in accordance with the regulations and bylaws, determine whether an applicant meets the requirements to become a member of the Association and the class of membership of the member of the Association. 2003, c. 6, s. 15.

Practise of interior design

16 No person shall practise or advertise or purport to be entitled to practise interior design in the Province unless

- (a) the name of the person is entered in the Register as a member of the Association in the Registered Class or the Non-resident Registered Class;
- (b) the person practises interior design under the supervision of a member of the Association in the Registered Class or Non-resident Registered Class; or
- (c) it is in accordance with this Act, the regulations and the bylaws. 2003, c. 6, s. 16.

Prohibition on receipt of fee, reward or remuneration

17 No person shall receive a fee, reward or remuneration for professional services rendered in the practice of interior design unless it is in accordance with Section 16. 2003, c. 6, s. 17.

Seal and signature

18 No member of the Association shall affix or permit to be affixed that member's seal or signature to any technical submissions that

- (a) that member is not authorized to perform under that member's class of membership; or
- (b) are not prepared by that member or under that member's supervision. 2003, c. 6, s. 18.

Restriction on use of title

19 (1) Subject to clause 4(a), no person shall use the title "Interior Designer" or any extension of or abbreviation of that title.

(2) Subject to clause 4(b), no person shall use the title "Intern Interior Designer" or any extension of or abbreviation of that title. 2003, c. 6, s. 19.

Prohibition on practise

20 No person, partnership or association of persons shall permit a person, partnership or association of persons to practise interior design unless it is in accordance with this Act, the regulations and the bylaws. 2003, c. 6, s. 20.

Offence

21 Every person who knowingly furnishes false information in an application pursuant to this Act or in any statement required under this Act is guilty of an offence. 2003, c. 6, s. 21.

DISCIPLINE

Conduct of members

22 Every member of the Association shall behave in a manner that does not constitute

- (a) professional misconduct;
- (b) conduct unbecoming an interior designer; or
- (c) professional incompetence. 2003, c. 6, s. 22.

Complaint

23 Any person may make a complaint to the Registrar that a member of the Association has violated this Act, the regulations or the bylaws. 2003, c. 6, s. 23.

Complaints committee

24 (1) The Board shall appoint a complaints committee composed of at least three persons, only one of whom is not a member of the Association or former member of the Association.

(2) The Board shall appoint one of the members of the complaints committee who is a member of the Association and is not a current member of the Board, to be the chair of the complaints committee.

(3) The complaints committee may investigate a complaint made under this Act and may

- (a) dismiss the complaint;
- (b) appoint a mediator to resolve the complaint;
- (c) caution a member of the Association;
- (d) refer the complaint to a hearing committee; or
- (e) enter into a settlement agreement with the member of the Association. 2003, c. 6, s. 24.

Hearing committee

25 (1) The Board shall appoint a hearing committee for the purpose of hearing a complaint against a member of the Association.

(2) The hearing committee consists of three persons, one of whom, other than the chair, is a member of the Association and one of whom is not a member of the Association or former member of the Association.

(3) The Board shall appoint a chair of the hearing committee who is a member of the Association and is not a current member of the Board. 2003, c. 6, s. 25.

Hearing

26 (1) The hearing committee shall hold a hearing to hear a complaint against a member of the Association and may

- (a) adjudicate, dismiss or otherwise dispose of a complaint;
- (b) make orders and directions in relation to the complaint;
- (c) make a finding that a member of the Association is in violation of this Act, the regulations or the bylaws.

(2) Where the hearing committee makes a finding under clause (1)(c), the committee may

- (a) order the cancellation of the certificate of membership of a member of the Association;

(b) order the suspension of the membership or the privileges of a member of the Association to practise interior design for a fixed period or until the fulfillment of a condition;

(c) order the cautioning, reprimanding or counselling of a member of the Association;

(d) where the member's registration or privilege to practise interior design is cancelled or suspended, order the member of the Association to return the seal or certificate of registration to the Registrar;

(e) order the imposition of a fine, not exceeding an amount prescribed in the regulations, payable to the Association within the time specified by the hearing committee;

(f) order the imposition of terms, conditions or limitations on the entitlement of a member of the Association to practise interior design;

(g) order the fixing and imposition of the costs of the investigation and hearing of the complaint on the member of the Association and the payment of those costs within such time period as is specified by the hearing committee. 2003, c. 6, s. 26.

Decisions of committees

27 (1) A decision of a majority of the members of the complaints committee is a decision of that committee.

(2) A decision of a majority of the members of the hearing committee is a decision of that committee. 2003, c. 6, s. 27.

Powers of committees

28 The complaints committee and the hearing committee have all the powers, privileges and immunities of a commissioner appointed under the *Public Inquiries Act*. 2003, c. 6, s. 28.

Continuation of jurisdiction and authority

29 The jurisdiction and authority of the complaints committee and the hearing committee in respect of any disciplinary matter arising out of the conduct of the person while a member of the Association continues notwithstanding that the person who is the subject of a complaint ceases to be a member of the Association. 2003, c. 6, s. 29.

GENERAL, APPEALS AND PENALTY

Seals

30 (1) The Registrar shall, in accordance with the bylaws, provide each member of the Association entered in the Register in the Registered Class with a seal in a form approved by the Board.

(2) The seal referred to in subsection (1) must contain the registration number and title "Registered Member - Association of Interior Designers of Nova Scotia".

(3) The Registrar shall, in lieu of a seal, provide each member of the Association entered in the Register in the Non-resident Registered Class with a certificate of non-resident registration. 2003, c. 6, s. 30.

Technical submissions

31 (1) Every technical submission prepared or issued by a member of the Association in the Registered Class and filed with the authority having jurisdiction for the purpose of obtaining a building permit must

- (a) contain the signature and seal of that member of the Association;
- (b) contain the date on which it was approved; and
- (c) be identified as an interior design document.

(2) Every technical submission prepared or issued by a member of the Association in the Non-resident Registered Class and filed with the authority having jurisdiction for the purpose of obtaining a building permit must

- (a) contain the signature of that member of the Association;
- (b) contain the date on which it was approved;
- (c) be identified as an interior design document; and
- (d) be accompanied by the original certificate of non-resident registration. 2003, c. 6, s. 31.

Appeals

32 (1) An appeal from any decision or order of a hearing committee on a question of law or jurisdiction may be made to a judge of the Court.

(2) An appeal under subsection (1) may be made by filing a notice of appeal with the Registrar of the Court and serving notice on the Registrar appointed under this Act within 30 days of the day on which the decision or order was made by the hearing committee.

(3) Upon receipt of a notice of appeal, the Registrar appointed under this Act shall request a copy of the record of proceedings before the hearing committee and shall file it and a copy of the decision or order being appealed from with the Registrar of the Court. 2003, c. 6, s. 32; 2004, c. 6, s. 12.

Powers of Court

33 The Court may, on the basis of the record referred to in subsection 32(3),

- (a) make any finding that, in the judge's opinion, ought to have been made by the hearing committee;
- (b) confirm, vary or quash the decision of the hearing committee;
- (c) refer the matter back to the hearing committee, with or without directions. 2003, c. 6, s. 33.

No action lies

34 No action or proceeding for damages lies against the Association, the Board, any committee of the Association or against any officer, employee or agent of the Association for anything done in good faith for and on behalf of the Association under this Act, the regulations or the bylaws. 2003, c. 6, s. 34.

Proof of practice

35 Proof of the performance of one act in the practice of interior design on one occasion is sufficient to establish that a person has engaged in the practice of interior design. 2003, c. 6, s. 35.

Injunction

36 Where a person does or attempts to do anything contrary to this Act, the regulations or the bylaws, the doing of the thing may be restrained by an injunction of the court at the instance of the Board. 2003, c. 6, s. 36.

Offence and penalty

37 Every person who violates this Act, the regulations or the bylaws is guilty of an offence and is liable upon summary conviction

- (a) for a first offence, to a fine not exceeding \$5,000;
- (b) for a second offence, to a fine not exceeding \$10,000; and
- (c) for a third or subsequent offence, to a fine not exceeding \$15,000,

or to imprisonment for a term not exceeding six months, or to both a fine and imprisonment. 2003, c. 6, s. 37.

Informations

38 Any information to be laid pursuant to this Act may be laid by the Registrar or any member of the Association authorized by the Board. 2003, c. 6, s. 38.

Separate offence

39 Where a violation of this Act, the regulations or the bylaws by a person who does not have the right to practise interior design continues for more than one day, the person is guilty of a separate offence for each day that the violation continues. 2003, c. 6, s. 39.

Fines and penalties

40 All fines and penalties payable under this Act as a result of a prosecution by or on behalf of the Association belong to the Association. 2003, c. 6, s. 40.

BYLAWS AND REGULATIONS**Bylaws**

41 The Association may make bylaws

- (a) respecting the conduct and proceeding of meetings of members of the Association, directors and committees;

- (b) providing for the appointment of committees and the compensation, powers and duties of the committees;
- (c) respecting the powers, duties and qualifications of the Registrar and officers, agents and employees of the Association;
- (d) providing for the fixing by the members of the Association, upon the recommendation of the Board, at a meeting of the members of the Association, of fees and special assessments payable by an applicant for membership in the Association and by members and classes of members;
- (e) respecting the expenses of the Association and members of the Association;
- (f) prescribing the seal of the Association;
- (g) providing for the manner of execution of documents by the Association;
- (h) prescribing forms;
- (i) respecting the management of the Association and the maintenance of the Register;
- (j) establishing and maintaining a Code of Ethics;
- (k) respecting information to be included in the Register;
- (l) respecting the election of members to the Board, including the qualification of members and the nomination process;
- (m) respecting continuing competency requirements of members of the Association;
- (n) respecting advertising by members;
- (o) respecting the use of terms, titles or designations in the practice of interior design;
- (p) prescribing the records and accounts to be kept by members of the Association and providing for the production, inspection and examination of those records and accounts;
- (q) respecting the monitoring and evaluation of the practical experience of people that are training to become practising members of the Association;
- (r) respecting the issuance of and use of seals by members of the Association;
- (s) respecting any other matter or thing that the Board considers necessary or incidental to carry out the objects of the Association. 2003, c. 6, s. 41.

Approval of bylaws

42 (1) Subject to subsection (2), in order to be effective, every bylaw of the Association or any amendment or repeal of a bylaw must be passed by a resolution of two thirds of the members of the Association voting at an annual general meeting of the Association or a special meeting of the Association called for that purpose.

(2) Where a bylaw, amendment or repeal is proposed to be voted on at any meeting of the Association, a request in writing signed by at least three members of the Association must be delivered to the secretary of the Association, not less than 21 days before the meeting at which it is to be voted on.

(3) The secretary of the Association shall, in accordance with the bylaws, send a copy of the request referred to in subsection (2), to the members of the Association and a copy of the request must be included in the notice of the meeting of the Association. 2003, c. 6, s. 42.

Regulations

43 (1) The Association may, with the approval of the Governor in Council, make regulations

- (a) prescribing classes of membership in the Association;
- (b) respecting the qualifications required for classes of membership in the Association and the rights of classes of membership;
- (c) respecting education, including incorporating by reference accreditation standards for membership in the Association of other organizations, as they may be amended from time to time;
- (d) respecting the practical experience required for membership in the Association;
- (e) respecting the scope of practice of a member of the Association;
- (f) prescribing examinations, including incorporating by reference examinations set by the National Council for Interior Design Qualification, as they may be amended from time to time, and exempting classes of members of the Association from those requirements;
- (g) respecting the professional liability insurance a member of the Association must hold and exempting certain classes of persons from the requirement;
- (h) respecting applications for registration as a member of the Association;
- (i) respecting the evaluation of members of the Association and applicants for registration as members of the Association who have not practised interior design for a period of time and setting conditions for registration in and continued registration in the different classes of membership for such persons;
- (j) respecting standards of professional conduct;
- (k) respecting professional misconduct, conduct unbecoming an interior designer and professional incompetence;
- (l) respecting the process for disciplinary action against a member of the Association, including the power and procedure for the investigation, mediation, settlement, adjudication or other resolution of a complaint;

- (m) respecting the conduct, power and procedure and duties of committees;
- (n) respecting the revocation or suspension of registration of a member of the Association;
- (o) respecting the reporting and publication of a decision in a disciplinary matter;
- (p) designating a person to act on behalf of the Registrar;
- (q) defining “professional misconduct”, “conduct unbecoming an interior designer” and “professional incompetence”;
- (r) respecting such other matter or thing that the Association 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*. 2003, c. 6, s. 43; 2004, c. 6, s. 13.

TRANSITIONAL

Continuation of proceedings

44 Every proceeding taken under the former Act shall be taken up and continued under and in conformity with this Act without any further formality. 2003, c. 6, s. 45.

Continuation of bylaws

45 Every bylaw of the Association made under the former Act, to the extent that it is not inconsistent with this Act, remains in force until the bylaw is amended or repealed pursuant to this Act. 2003, c. 6, s. 46.

CHAPTER I-14

**An Act to Facilitate the Making,
Recognition, Enforcement and Variation
of Interjurisdictional Support Orders**

Table of Contents

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

	Section
Short title.....	1
PART I	
General	
Interpretation.....	2
Application respecting Divorce Act (Canada).....	3
Designation of court.....	4
PART II	
New Orders	
Interpretation.....	5
Application of Part.....	6
Application by claimant residing in Province.....	7
Submission of application to designated authority.....	8
Provisional order.....	9
Application of Sections 11 to 17.....	10
Application by claimant from another jurisdiction.....	11
Information to be considered by court.....	12
Parentage.....	13
Choice of law rules.....	14
Order.....	15
Order where notice not complied with.....	16
Sending order to reciprocating jurisdiction.....	17
PART III	
Registration and Enforcement of Orders Made Outside the Province	
Application of Part.....	18
Receipt of order from reciprocating jurisdiction.....	19
Registration.....	20
Notice of registration.....	21
Effect of setting aside.....	22
Deemed order.....	23
Conversion to Canadian currency.....	24
Translation of foreign order not in English or French.....	25
PART IV	
Variation of Orders	
Interpretation of Part.....	26
Application of Part.....	27
Not necessary to re-register varied order.....	28
Variation in reciprocating jurisdiction.....	29
Restrictions.....	30

Support-variation application 31
 Submission of variation application 32
 Where respondent not in reciprocating jurisdiction 33
 Provisional variation order 34
 Application of Sections 36 to 42 35
 Variation application from another jurisdiction 36
 Notice of hearing 37
 Information to be considered by court 38
 Choice of law rules 39
 Order 40
 Order where notice not complied with 41
 Sending order to reciprocating jurisdiction 42
 Variation of registered orders 43

PART V

Appeals and Miscellaneous

Appeal 44
 Appointment of designated authority 45
 Sending of documents by designated authority 46
 Sending documents electronically 47
 Receiving documents electronically 48
 Documents may be anonymized 49
 Confidential information 50
 Translation of orders and documents 51
 Designated authority to carry out currency conversion 52
 Right of subrogation 53
 Terminology 54
 Judicial notice of law of reciprocating jurisdiction 55
 Proof of appointment 56
 Receipt in evidence 57
 Spouses as witnesses 58
 Other remedies not impaired 59
 Request to locate 60
 Regulations respecting reciprocating jurisdictions 61
 Regulations 62
 Regulations Act 63
 Application of former Act 64

Short title

1 This Act may be cited as the *Interjurisdictional Support Orders Act*.
2002, c. 9, s. 1.

PART I

GENERAL

Interpretation

2 In this Act,

“appropriate authority”, when used in reference to a reciprocating jurisdiction, means the person in that jurisdiction who corresponds to the designated authority in the Province;

“claimant” means a person who applies under this Act for support;

“clerk” means a person who has the authority of a clerk or registrar of the court;

“designated authority” means the person appointed under subsection 45(1), and includes a person to whom a power or duty is delegated under subsection 45(2);

“former Act” means the *Maintenance Orders Enforcement Act*;

“Nova Scotia court” means a court designated under Section 4;

“prescribed” means prescribed by the regulations, if any, or by the rules of court;

“provisional order” means

(a) a support order of a Nova Scotia court that has no effect until confirmed by a court in a reciprocating jurisdiction; or

(b) a similar order made in a reciprocating jurisdiction and received for confirmation in the Province;

“provisional variation order” means

(a) an order of a Nova Scotia court that varies a support order and that has no effect until confirmed by a court in a reciprocating jurisdiction; or

(b) a similar order made in a reciprocating jurisdiction and received for confirmation in the Province;

“reciprocating jurisdiction” means a jurisdiction prescribed as such in the regulations made under Section 62;

“support” includes support, maintenance or alimony payable for a person or for the child of a person or both;

“support order” means an order made by a court or an administrative body requiring the payment of support, and includes

(a) the provisions of a written agreement requiring the payment of support, if those provisions are enforceable in the jurisdiction in which the agreement was made as if they were contained in an order of a court of that jurisdiction; and

(b) the recalculation by an administrative body of the payment of support for a child, if the recalculation is enforceable in the jurisdiction in which the recalculation was made as if it were an order of, or was contained in an order of, a court of that jurisdiction. 2002, c. 9, s. 2; 2002, c. 30, s. 9; 2012, c. 24, s. 1.

Application respecting Divorce Act (Canada)

3 This Act and the regulations are the applicable provincial law for the purpose of subsections 18.1(2), 19(2) and 19.1(2) of the *Divorce Act* (Canada) except where the rules of court include specific rules for proceedings under sections 18 to 19.1 of the *Divorce Act* (Canada). 2022, c. 16, s. 1.

Designation of court

4 (1) The Attorney General may designate a court or courts in the Province for the purpose of proceedings under this Act.

(2) The exercise by the Attorney General of the authority contained in subsection (1) is not a regulation within the meaning of the *Regulations Act*. 2002, c. 9, s. 3; 2012, c. 62, s. 1.

PART II

NEW ORDERS

Interpretation

5 In this Part, “respondent” means the person against whom support is sought. 2002, c. 9, s. 4.

Application of Part

6 This Part applies only if there is no support order in effect requiring the respondent to pay support for the claimant or for any children for whom support is claimed or for both. 2002, c. 9, s. 5.

Application by claimant residing in Province

7 (1) A claimant who resides in the Province and believes that the respondent habitually resides in a reciprocating jurisdiction may start a process in the Province that could result in a support order being made in the reciprocating jurisdiction.

(2) To start the process, the claimant shall complete a support application that includes

- (a) the claimant’s name and address for service;
- (b) a copy of the specific statutory or other legal authority on which the application is based unless the claimant is relying on the law of the jurisdiction where the respondent habitually resides;
- (c) the amount and nature of support claimed;
- (d) a document setting out
 - (i) the respondent’s name and any other information known to the claimant that can be used to locate or identify the respondent,
 - (ii) the respondent’s financial circumstances, to the extent known by the claimant,
 - (iii) the name of each person for whom support is claimed and the date of birth of any child for whom support is claimed, and
 - (iv) the evidence in support of the application that is relevant to establishing entitlement to or the amount of support, including
 - (A) where support is claimed for a child, details of the child’s parentage and information about the child’s financial and other circumstances, and
 - (B) where support is claimed for the claimant, information about the claimant’s financial and

other circumstances and the claimant's relationship with the respondent; and

(e) any other information or documents required by the regulations.

(3) The claimant is not required to notify the respondent that a proceeding has been started under this Section. 2002, c. 9, s. 6; 2012, c. 24, s. 2; 2022, c. 16, s. 2.

Submission of application to designated authority

8 (1) The claimant shall submit the support application to the designated authority, accompanied by a certified translation if required by the appropriate authority in the reciprocating jurisdiction in which the claimant believes the respondent is habitually resident.

shall (2) On receiving a support application, the designated authority

(a) review the application to ensure that it is complete; and

(b) send a copy of the completed application, as soon as practicable, to the appropriate authority in the reciprocating jurisdiction in which the claimant believes the respondent habitually resides.

(3) On receiving a request for further information or documents from a reciprocating jurisdiction under an enactment in that jurisdiction that corresponds to clause 12(2)(a), the claimant shall provide the further information or documents within the time referred to in the request and in accordance with the regulations.

(4) On receiving a copy of an order and reasons, if any, from a reciprocating jurisdiction under an enactment in that jurisdiction that corresponds to Section 17, the designated authority shall provide a copy of the order and reasons, if any, to the claimant and the Nova Scotia court in accordance with the regulations. 2002, c. 9, s. 7; 2012, c. 24, s. 3; 2022, c. 16, s. 3.

Provisional order

9 (1) Where the respondent is habitually resident in a reciprocating jurisdiction that requires a provisional order, the Nova Scotia court may, on application by a claimant and without notice to and in the absence of a respondent, make a provisional order taking into account the legal authority on which the claimant's application for support is based.

(2) Evidence in an application under subsection (1) may be given orally, in writing or as the court may allow.

(3) Where a provisional order is made, the court shall send it to the designated authority which shall send to the reciprocating jurisdiction

(a) a certified copy of the provisional order; and

(b) a support application referred to in subsection 7(2).

(4) Where, during a proceeding for confirmation of a provisional order, a court in a reciprocating jurisdiction sends a matter back for further evidence to the Nova Scotia court that made the provisional order, the Nova Scotia court shall, after giving notice to the claimant, receive further evidence.

(5) Where evidence is received under subsection (4), the clerk of the Nova Scotia court shall send to the court in the reciprocating jurisdiction

- (a) a certified copy of the evidence; and
- (b) where the Nova Scotia court considers it appropriate to modify its provisional order, a certified copy of the order as modified.

(6) Where a provisional order made under this Section comes before a court in a reciprocating jurisdiction and confirmation is denied in respect of one or more persons for whom support is sought, the Nova Scotia court that made the provisional order may, on motion within six months after the denial of confirmation, reopen the matter, receive further evidence and make a new provisional order for a person in respect of whom confirmation was denied. 2002, c. 9, s. 8; 2012, c. 24, s. 4; 2022, c. 16, s. 4.

Application of Sections 11 to 17

- 10 (1) Sections 11 to 17 apply in respect of
- (a) provisional orders referred to in clause (b) of the definition of “provisional order” in Section 2; and
 - (b) documents from reciprocating jurisdictions corresponding to a support application described in subsection 7(2).

(2) In Sections 11 to 17, “support application” refers to the orders and documents described in subsection (1). 2002, c. 9, s. 9.

Application by claimant from another jurisdiction

11 (1) Where the designated authority receives a support application from an appropriate authority in a reciprocating jurisdiction with information that the respondent habitually resides in the Province, it shall serve on the respondent, in accordance with the regulations,

- (a) a copy of the support application; and
- (b) a notice requiring the respondent to appear at a place and time set out in the notice and to provide the information or documents required by the regulations.

(2) For greater certainty, the claimant is not required to be served with the notice, information or documents referred to in clause (1)(b).

(3) Where the designated authority knows or believes that the respondent is habitually resident in another reciprocating jurisdiction in Canada, the designated authority shall forward the support application to the appropriate authority in that other reciprocating jurisdiction and shall notify the appropriate authority in the originating reciprocating jurisdiction that it has done so.

- (4) Where the designated authority
- (a) is unable to determine where the respondent resides;
 - (b) is unable to serve the respondent in accordance with subsection (1); or
 - (c) knows or believes that the respondent is habitually resident in a jurisdiction outside Canada,

the designated authority shall return the support application to the appropriate authority in the originating reciprocating jurisdiction with any available information respecting the location and circumstances of the respondent. 2002, c. 9, s. 10; 2012, c. 24, s. 5; 2015, c. 40, s. 1.

Information to be considered by court

12 (1) In dealing with a support application, the Nova Scotia court shall consider

- (a) the evidence provided to the Nova Scotia court; and
- (b) the documents sent from the reciprocating jurisdiction.

(2) The Nova Scotia court may receive evidence, information or documents under this Section from a party or witness by telephone or other means of technology unless it would not be appropriate to do so in the circumstances.

(3) Where the Nova Scotia court needs further information or documents from the claimant to consider making a support order, the Nova Scotia court shall

- (a) send the designated authority a direction to request the information or documents from the claimant or the appropriate authority in the reciprocating jurisdiction; and
- (b) adjourn the hearing.

(4) When the Nova Scotia court acts under subsection (3), it may also make an interim support order.

(5) Where the Nova Scotia court does not receive the information or documents requested under subsection (3) within 12 months after the request is made, it may dismiss the support application and terminate any interim support order made under subsection (4).

(6) The dismissal of the application under subsection (5) does not preclude the claimant from commencing a new support application. 2002, c. 9, s. 11; 2012, c. 24, s. 6; 2022, c. 16, s. 5.

Parentage

13 (1) Where a child's parentage is in issue and has not previously been determined, the Nova Scotia court may determine the matter.

(2) A determination of parentage under this Section has effect only for the purpose of proceedings relating to support for the child. 2002, c. 9, s. 12.

Choice of law rules

14 The following rules apply with respect to determining entitlement to support and the amount of support:

- (a) in determining a child's entitlement to support, the Nova Scotia court shall first apply Nova Scotia law but, where the child is not entitled to support under Nova Scotia law, the Nova Scotia court shall apply the law of the jurisdiction in which the child is habitually resident;
- (b) in determining the claimant's entitlement to and the amount of support, the Nova Scotia court shall first apply Nova Scotia law but, where the claimant is not entitled to support under Nova Scotia law, the Nova Scotia court shall apply the law of the jurisdiction in which the claimant and the respondent last maintained a common habitual residence;
- (c) in determining the amount of support for a child, the Nova Scotia court shall apply Nova Scotia law, including, for greater certainty, the *Child Support Guidelines*, as amended from time to time, made under the *Parenting and Support Act*. 2002, c. 9, s. 13; 2012, c. 24, s. 7; 2015, c. 44, s. 46.

Order

15 (1) On the conclusion of a hearing, the Nova Scotia court may, in respect of a claimant, a child or both,

- (a) make a support order;
- (b) make an interim support order and adjourn the hearing to a specified date;
- (c) adjourn the hearing to a specified date without making an interim temporary support order; or
- (d) refuse to make a support order.

(2) The Nova Scotia court may make a retroactive support order.

(3) A support order may require support to be paid in periodic payments, as a lump sum or both.

(4) Where the Nova Scotia court refuses to make a support order, it shall give written reasons for its decision and send them to the designated authority.

(5) Where it is not apparent on the face of an order made pursuant to this Section which law the Nova Scotia court applied in accordance with Section 14, it is presumed that the court applied Nova Scotia law. 2002, c. 9, s. 14; 2012, c. 24, s. 8.

Order where notice not complied with

16 (1) Where the respondent does not appear as required in the notice or does not provide the information or documents required under clause 11(1)(b), the Nova Scotia court may make an order in the absence of the respondent or of the information or documents and, in making the order, may draw any inference it considers appropriate.

(2) Where the Nova Scotia court makes an order under subsection (1), it shall send a copy of the order to the designated authority and to the respondent in accordance with the regulations. 2002, c. 9, s. 15; 2022, c. 16, s. 6.

Sending order to reciprocating jurisdiction

17 When the designated authority receives an order that is made under Section 15 or 16, it shall promptly send a copy of it, with reasons, if any, to the appropriate authority in the reciprocating jurisdiction that sent the claimant's support application. 2002, c. 9, s. 16; 2022, c. 16, s. 7.

PART III

REGISTRATION AND ENFORCEMENT OF ORDERS MADE OUTSIDE THE PROVINCE

Application of Part

18 This Part applies in respect of support orders, interim support orders and orders varying support orders made in reciprocating jurisdictions in and outside Canada, but not in respect of provisional orders or provisional variation orders. 2002, c. 9, s. 17.

Receipt of order from reciprocating jurisdiction

19 (1) To enforce an order to which this Part applies, a copy of the order must be sent to the designated authority, together with information about the location and circumstances of any party who is believed to habitually reside in the Province.

(2) On receiving the copy, the designated authority shall send the copy, in accordance with the regulations,

(a) to the clerk of the Nova Scotia court sitting nearest the place where the party is believed to reside; or

(b) where there is no party who is believed to habitually reside in the Province, to the clerk of any Nova Scotia court.

(3) Where the designated authority determines it is appropriate to do so, it may require a certified copy of the order made in a reciprocating jurisdiction in or outside of Canada from the appropriate authority or the party who resides in the reciprocating jurisdiction.

(4) Where the designated authority determines that requiring a certified copy of the order is appropriate under subsection (3), the designated authority may decline to forward a copy of the order to the clerk of the Nova Scotia court until a certified copy of the order is received. 2012, c. 24, s. 9; 2022, c. 16, s. 8.

Registration

20 (1) On receiving the order under subsection 19(2), the clerk of the Nova Scotia court shall register it as an order of the court.

(2) From the date of registration, the order has the same effect as a support order made by a Nova Scotia court.

(3) Where the order was made outside Canada, notice of its registration must be given in accordance with Section 21, but there is no requirement to give notice of the registration of an order made in Canada.

(4) The registered order may be enforced or varied under this Act with respect to arrears accrued before registration as well as with respect to obligations accruing after registration.

(5) Subsections (2), (3) and (4) apply whether the registered order is made before, on or after March 31, 2003.

(6) When an order has been registered under subsection (1), the clerk of the Nova Scotia court shall

(a) file a copy with the Director of Maintenance Enforcement and, where the order is so filed, the order shall be enforced in the Province in accordance with the *Maintenance Enforcement Act*; and

(b) send a copy to the designated authority.

(7) Notwithstanding subsection (6), where the registered order was made outside Canada, a copy shall not be filed with the Director of Maintenance Enforcement or sent to the designated authority until

(a) the 30-day period described in subsection 21(2) has expired without an application being made to set aside the registration; or

(b) where such an application is made during the 30-day period, the application has been finally disposed of.

(8) Unless otherwise stated in the order, the duration of the support obligation in an order registered under subsection (1) is governed by the law of the jurisdiction pursuant to which the order was made.

(9) Notwithstanding subsection (8), where the Director of Maintenance Enforcement is unable to determine the duration of the support obligation based on information received from the appropriate authority in the reciprocating jurisdiction, the Director may apply Nova Scotia law to determine the duration of the support obligation. 2002, c. 9, s. 19; 2012, c. 24, s. 10; 2022, c. 16, s. 9.

Notice of registration

21 (1) After the registration of an order made in a reciprocating jurisdiction outside Canada, the clerk of the Nova Scotia court shall, in accordance with the regulations, notify

(a) any party to the order believed to habitually reside in the Province; and

(b) any party required to pay support under the order even if that party is not believed to habitually reside in the Province.

(2) Within 30 days after receiving notice of the registration of the order, a party to the order may make an application to the Nova Scotia court to set aside the registration.

(3) A party who makes an application under subsection (2) shall give notice of it to the designated authority and to the claimant in accordance with the regulations.

(4) On an application under subsection (2), the Nova Scotia court may

- (a) confirm the registration; or
- (b) set aside the registration if the Nova Scotia court determines that
 - (i) in the proceeding in which the order was made, a party to the order did not have proper notice or a reasonable opportunity to be heard,
 - (ii) the order is contrary to public policy in the Province,
 - (iii) the court that made the order did not have jurisdiction to make it,
 - (iv) it is not satisfied with the authenticity or integrity of the order made in a reciprocating jurisdiction outside of Canada, or
 - (v) in the proceeding in which the order was originally registered within Canada a party to the order did not have proper notice or a reasonable opportunity to be heard.

(5) For the purpose of subclause (4)(b)(iii), the Nova Scotia court shall not determine that the court that made the order did not have the jurisdiction to make the order if

- (a) both parties to the order were habitually resident in the jurisdiction in which the order was made; or
- (b) a party who was not habitually resident in the jurisdiction in which the order was made was subject to the jurisdiction of the court that made the order under the Province's conflict of laws rules.

(6) The Nova Scotia court may set aside registration of an order made in a reciprocating jurisdiction outside Canada under subclause (4)(b)(iv) only if it has requested a certified copy of the order and a certified copy of the order has not been received.

(7) Where the Nova Scotia court sets aside the registration, it shall give written reasons for its decision and send them to the designated authority.

(8) For the purpose of subclause (4)(b)(iii), a court has jurisdiction where

- (a) both parties to the order ordinarily reside in the reciprocating jurisdiction outside Canada; or
- (b) a party does not ordinarily reside in the reciprocating jurisdiction outside Canada but is subject to the jurisdiction of the court that made the order.

(9) The clerk of the Nova Scotia court shall give notice of a decision or order of that court to the parties and the designated authority in accordance with the regulations. 2002, c. 9, s. 20; 2012, c. 24, s. 11; 2022, c. 16, s. 10.

Effect of setting aside

22 (1) Where the registration of an order made in a reciprocating jurisdiction outside Canada is set aside under Section 21, the order shall be dealt with under this Act as if it were a document corresponding to a support application received under subsection 11(1) or a support variation application received under subsection 36(1).

(2) Where the order does not contain the necessary information or documents required for a support application or support variation application, the designated authority shall request them from the claimant or from the appropriate authority of the reciprocating jurisdiction in which the order was made, and no further steps may be taken in the proceeding until the designated authority has received the required material. 2002, c. 9, s. 21.

Deemed order

23 (1) An order made in a reciprocating jurisdiction outside Canada received by the designated authority under this Part is deemed to be an order made in a reciprocating jurisdiction within Canada and subsections 21(2) and (8) and Section 22 do not apply if that order

(a) was previously registered in another province of Canada under an Act that corresponds to this Act; and

(b) the registration has not been set aside in that province of Canada.

(2) Notwithstanding subsection (1), the respondent may apply to the Nova Scotia court under subsection 21(2) if the respondent did not receive notice of registration in the province of Canada where the order was previously registered. 2022, c. 16, s. 11.

Conversion to Canadian currency

24 Where an order made in a reciprocating jurisdiction outside Canada that has been registered and filed in accordance with Section 20 refers to an amount of support that is not expressed in Canadian currency, the conversion of the amount into Canadian currency must be determined by the designated authority in accordance with the regulations. 2002, c. 9, s. 22.

Translation of foreign order not in English or French

25 (1) Where an order or other document from a reciprocating jurisdiction outside Canada is written in a language other than English or French, the order or document must be accompanied by a translation of the order or document into the English or French language.

(2) A translation required under subsection (1) must be authenticated as being accurate by a certificate of the translator. 2002, c. 9, s. 23.

PART IV

VARIATION OF ORDERS

Interpretation of Part

- 26** In this Part,
“applicant” means the party applying to vary a support order;
“respondent” means the party who is the respondent in a support-variation application. 2002, c. 9, s. 24.

Application of Part

27 This Part applies in respect of support orders that are made in the Province or made in a reciprocating jurisdiction and registered in a Nova Scotia court under Part III or the former Act, but not in respect of provisional orders or provisional variation orders. 2002, c. 9, s. 25.

Not necessary to re-register varied order

28 It is not necessary to re-register an order that is registered under Part III and subsequently varied under this Part. 2002, c. 9, s. 26.

Variation in reciprocating jurisdiction

29 Where a support order originally made in the Province is varied in a reciprocating jurisdiction under provisions that correspond to Sections 36 to 42, it is deemed to be so varied in the Province. 2002, c. 9, s. 27.

Restrictions

- 30** (1) Nothing in this Part
(a) authorizes a judge of the Supreme Court of Nova Scotia (Family Division) to vary a support order made in Canada by a federally appointed judge; or
(b) allows a support order originally made under the *Divorce Act* (Canada) to be varied except as authorized by a federal enactment.

(2) Notwithstanding subsection (1), a judge of the Supreme Court of Nova Scotia (Family Division) may make a provisional order to vary a support order made in Canada under a provincial enactment by a federally appointed judge. 2002, c. 9, s. 28.

Support-variation application

31 (1) An applicant who habitually resides in the Province and believes that the respondent habitually resides in a reciprocating jurisdiction may start a process in the Province that could result in a variation order being made in the reciprocating jurisdiction.

(2) To start the process, the applicant shall complete a support-variation application that includes

- (a) the applicant’s name and address for service;

(b) a certified copy of the support order, unless the designated authority advises the applicant that a non-certified copy is acceptable;

(c) a copy of the specific statutory or other legal authority on which the application is based, unless the applicant is relying on the law of the jurisdiction where the respondent habitually resides;

(d) details of the variation applied for, which may include a termination of the support order; and

(e) the document described in subsection (3).

(3) The document must set out

(a) the respondent's name and any information known to the applicant that can be used to locate or identify the respondent;

(b) the respondent's financial circumstances, to the extent known by the applicant, including whether the respondent is receiving social assistance;

(c) whether the support order was assigned and any details of the assignment known to the applicant;

(d) the name of each person, to the extent known by the applicant, for whom support is payable or who would be affected by the variation;

(e) the evidence in support of the application, including

(i) where support to the applicant or respondent is an issue, information about their relationship, and

(ii) where the variation would affect support for a child, information about the child's financial and other circumstances;

(f) the prescribed information about the applicant's financial circumstances; and

(g) any other prescribed information or documents.

(4) The applicant is not required to notify the respondent that a proceeding has been started under this Section. 2002, c. 9, s. 29; 2012, c. 24, s. 12; 2022, c. 16, s. 12.

Submission of variation application

32 (1) The applicant shall submit the support-variation application to the designated authority in the Province, accompanied by a certified translation if required by the appropriate authority in the reciprocating jurisdiction in which the applicant believes the respondent is habitually resident.

(2) On receiving a support-variation application, the designated authority shall

(a) review the application to ensure that it is complete; and

(b) send a copy of the completed application, as soon as practicable, to the appropriate authority in the reciprocating jurisdiction in which the applicant believes the respondent habitually resides.

(3) On receiving a request for further information or documents from a reciprocating jurisdiction under an enactment in that jurisdiction that corresponds to clause 38(3)(a), the applicant shall provide the further information or documents, within the time referred to in the request and in accordance with the regulations.

(4) On receiving a copy of an order and reasons, if any, from a reciprocating jurisdiction under an enactment in that jurisdiction that corresponds to Section 40, the designated authority shall provide a copy of the order and reasons, if any, to the applicant, in accordance with the regulations. 2002, c. 9, s. 30; 2012, c. 24, s. 13; 2022, c. 16, s. 13.

Where respondent not in reciprocating jurisdiction

33 Where the applicant habitually resides in the Province and the respondent either

- (a) no longer habitually resides in a reciprocating jurisdiction; or
- (b) habitually resides in a reciprocating jurisdiction that cannot, under its laws, or will not, facilitate the determination of a support-variation application,

the applicant may apply directly to the Nova Scotia court to vary the support order, and the court may make a variation order if the respondent has been given notice of the proceeding. 2012, c. 24, s. 14.

Provisional variation order

34 (1) Where the applicant reasonably believes that the respondent habitually resides in a reciprocating jurisdiction that requires a provisional variation order, the Nova Scotia court may, on the applicant's application and without notice to the respondent, make a provisional variation order taking into account the legal authority on which the applicant's application for variation is based.

(2) Evidence on an application under subsection (1) may be given orally, in writing or as the court may allow.

(3) Where a provisional variation order is made, the court shall send it to the designated authority which shall send to the reciprocating jurisdiction

- (a) a certified copy of the provisional variation order; and
- (b) a support-variation application referred to in subsection 31(2).

(4) Where, in considering whether to confirm a provisional variation order, a court in a reciprocating jurisdiction sends a matter back for further evidence to the Nova Scotia court that made the provisional variation order, the Nova Scotia court shall, after giving notice to the applicant, receive further evidence.

(5) Where evidence is received under subsection (4), the clerk of the Nova Scotia court shall send to the court in the reciprocating jurisdiction

- (a) a certified copy of the evidence; and
- (b) where the Nova Scotia court considers it appropriate to modify its provisional variation order, a certified copy of the order as modified.

(6) Where a provisional variation order made under this Section comes before a court in a reciprocating jurisdiction and confirmation is denied in respect of one or more persons for whom support is payable, the Nova Scotia court that made the provisional variation order may, on application within six months after the denial of confirmation, reopen the matter, receive further evidence and make a new provisional variation order for a person in respect of whom confirmation was denied. 2002, c. 9, s. 32; 2012, c. 24, s. 15; 2022, c. 16, s. 14.

Application of Sections 36 to 42

35 (1) Sections 36 to 42 apply in respect of

- (a) provisional variation orders referred to in clause (b) of the definition of “provisional variation order” in Section 2; and
- (b) documents from reciprocating jurisdictions corresponding to a support-variation application described in subsection 31(2).

(2) In Sections 36 to 42, “support-variation application” refers to the orders and documents described in subsection (1). 2002, c. 9, s. 33.

Variation application from another jurisdiction

36 (1) Where the designated authority receives a support-variation application from an appropriate authority in a reciprocating jurisdiction with information that the respondent habitually resides in the Province, it shall serve on the respondent, in accordance with the regulations,

- (a) a copy of the support-variation application; and
- (b) a notice requiring the respondent to appear at a place and time set out in the notice and to provide the information or documents required by the regulations.

(2) For greater certainty, the applicant is not required to be served with the notice, information or documents referred to in clause (1)(b).

(3) Where the designated authority knows or believes that the respondent is habitually resident in another reciprocating jurisdiction in Canada, the designated authority shall forward the support-variation application to the appropriate authority in that other reciprocating jurisdiction and shall notify the appropriate authority in the originating reciprocating jurisdiction that it has done so.

- (4) Where the designated authority
 - (a) is unable to determine where the respondent resides;
 - (b) is unable to serve the respondent in accordance with subsection (1); or
 - (c) knows or believes that the respondent is habitually resident in a jurisdiction outside Canada,

the designated authority shall return the support-variation application to the appropriate authority in the originating reciprocating jurisdiction with any available information respecting the location and circumstances of the respondent. 2002, c. 9, s. 34; 2012, c. 24, s. 16; 2015, c. 40, s. 2.

Notice of hearing

37 (1) When the Nova Scotia court receives a support-variation application under Section 36, the clerk shall serve on the respondent, in accordance with the regulations,

- (a) a copy of the support-variation application; and
- (b) a notice requiring the respondent to appear at a place and time set out in the notice and to provide the prescribed information or documents.

(2) For greater certainty, the applicant is not required to be served with the notice, information or documents referred to in clause (1)(b). 2002, c. 9, s. 35; 2015, c. 40, s. 3.

Information to be considered by court

38 (1) In dealing with a support-variation application, the Nova Scotia court shall consider

- (a) the evidence provided to the Nova Scotia court; and
- (b) the documents sent from the reciprocating jurisdiction.

(2) The Nova Scotia court may receive evidence, information or documents under this Section from a party or witness by telephone or other means of technology unless it would not be appropriate to do so in the circumstances.

(3) Where the Nova Scotia court needs further information or documents from the applicant to consider making a support-variation order, the Nova Scotia court shall

- (a) send the designated authority a direction to request the information or documents from the applicant or the appropriate authority in the reciprocating jurisdiction; and
- (b) adjourn the hearing.

(4) When the Nova Scotia court acts under subsection (3), it may also make an interim support-variation order.

(5) Where the Nova Scotia court does not receive the information or documents requested under subsection (3) within 12 months after the request is made, it may dismiss the support-variation application and terminate any interim support-variation order made under subsection (4).

(6) The dismissal of the application under subsection (5) does not preclude the applicant from commencing a new support-variation application. 2002, c. 9, s. 36; 2012, c. 24, s. 17; 2022, c. 16, s. 15.

Choice of law rules

39 The following rules apply with respect to determining entitlement to receive or to continue to receive support and the amount of support:

(a) in determining a child's entitlement to receive or to continue to receive support, the Nova Scotia court shall first apply Nova Scotia law but, where the child is not entitled to support under Nova Scotia law, the Nova Scotia court shall apply the law of the jurisdiction in which the child is habitually resident;

(b) in determining the amount of support for a child, the Nova Scotia court shall apply Nova Scotia law, including, for greater certainty, the *Child Support Guidelines*, as amended from time to time, made under the *Parenting and Support Act*;

(c) in determining the entitlement of a party other than a child to receive or continue to receive support, the Nova Scotia court shall first apply Nova Scotia law but, where the party is not entitled to support under Nova Scotia law, the Nova Scotia court shall apply

(i) the law of the jurisdiction in which the party habitually resides, or

(ii) where the party is not entitled to support under the law of the jurisdiction in which the party habitually resides, the law of the jurisdiction in which the parties last maintained a common habitual residence;

(d) in determining the amount of support for a party other than a child, the Nova Scotia court shall apply Nova Scotia law. 2002, c. 9, s. 37; 2012, c. 24, s. 18; 2015, c. 44, s. 47.

Order

40 (1) On the conclusion of a hearing, the Nova Scotia court may, in respect of the applicant, a child or both,

(a) make a support-variation order;

(b) make an interim support-variation order and adjourn the hearing to a specified date;

(c) adjourn the hearing to a specified date without making an interim support-variation order; or

(d) refuse to make a support-variation order.

(2) The Nova Scotia court may make a retroactive support-variation order.

(3) A support-variation order may require support to be paid in periodic payments, as a lump sum or both.

(4) Where the Nova Scotia court refuses to make a support-variation order, it shall give written reasons for its decision and send them to the designated authority.

(5) Where it is not apparent on the face of an order made under this Section which law the Nova Scotia court applied in accordance with Section 39, it is presumed that the court applied Nova Scotia law. 2002, c. 9, s. 38; 2012, c. 24, s. 19.

Order where notice not complied with

41 (1) Where the respondent does not appear as required in the notice or does not provide the information or documents required under clause 37(1)(b), the Nova Scotia court may make an order in the absence of the respondent or of the information or documents and in making the order may draw any inference it considers appropriate.

(2) Where the Nova Scotia court makes an order under subsection (1), it shall send a copy of the order to the designated authority and to the respondent in accordance with the regulations. 2002, c. 9, s. 39; 2022, c. 16, s. 16.

Sending order to reciprocating jurisdiction

42 When it receives an order that is made under Section 40 or 41, the designated authority shall, as soon as practicable, send a copy of it with reasons, if any, to the appropriate authority in the reciprocating jurisdiction in which the applicant resides and, where the support order was originally made in another reciprocating jurisdiction, to the appropriate authority in that jurisdiction. 2002, c. 9, s. 40; 2012, c. 24, s. 20; 2022, c. 16, s. 17.

Variation of registered orders

43 (1) This Section applies to the variation of a support order or a support-variation order referred to in subsection (2), other than a variation that has been commenced by a support-variation application under Part IV.

(2) The Nova Scotia court may, on a party's application, after taking into account any right of a government under Section 53, vary a support order or a support-variation order made or registered in the Province under this Act or the former Act if

(a) both the applicant and respondent accept the Nova Scotia court's jurisdiction;

(b) both the applicant and respondent habitually reside in the Province; or

(c) the respondent habitually resides in the Province and the support order was registered by the applicant under Part III or the former Act.

(3) The *Parenting and Support Act* applies for the purpose of varying a support order or a support-variation order under the circumstances referred to in subsection (2) as if the order being varied were an order for support under that Act. 2012, c. 24, s. 21; 2015, c. 44, s. 48.

PART V

APPEALS AND MISCELLANEOUS

Appeal

44 (1) Subject to subsections (2) and (4), a claimant, applicant or respondent or the designated authority may appeal any decision of the Nova Scotia court under this Act to the Nova Scotia Court of Appeal.

(2) An appeal must be commenced within 90 days after the date the Nova Scotia court's decision is entered as a judgment.

(3) Notwithstanding subsection (2), the Nova Scotia Court of Appeal may extend the appeal period even after it has expired.

(4) A person responding to an appeal under subsection (2) may appeal a decision in the same proceeding within 30 days after receiving notice of the appeal.

(5) An order under appeal remains in force pending the determination of the appeal unless the court that made the order or the Nova Scotia Court of Appeal orders otherwise.

(6) The registrar of the Nova Scotia Court of Appeal shall send a copy of that court's decision on the appeal to the designated authority which shall notify the appropriate authority in the reciprocating jurisdiction of the decision on the appeal. 2002, c. 9, s. 42.

Appointment of designated authority

45 (1) The Attorney General may appoint one or more persons to act as the designated authority in the Province for the purpose of this Act.

(2) The person appointed under subsection (1) may, in writing, delegate any power or duty under this Act to any other person or persons.

(3) No proceeding for damages may be commenced against the designated authority or any employee of the designated authority's office for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act. 2002, c. 9, s. 43.

Sending of documents by designated authority

46 On receipt of an order or document to be sent under this Act to a reciprocating jurisdiction, the designated authority shall send the order or document to the appropriate authority of the reciprocating jurisdiction. 2002, c. 9, s. 44.

Sending documents electronically

47 An order or other document referred to in Section 46 may be transmitted electronically with the approval of the appropriate authority of the reciprocating jurisdiction. 2022, c. 16, s. 18.

Receiving documents electronically

48 Subject to the regulations, the designated authority may receive documents transmitted electronically from an appropriate authority in a reciprocating jurisdiction. 2022, c. 16, s. 18.

Documents may be anonymized

49 The designated authority may remove any contact or other identifying information from any document to be sent or disclosed by the designated authority. 2022, c. 16, s. 18.

Confidential information

50 On application by a party, the designated authority or on its own motion, the court may order that any information provided for the purpose of a proceeding under this Act be kept confidential and not form part of the public record. 2022, c. 16, s. 18.

Translation of orders and documents

51 Where a reciprocating jurisdiction requires an order or other document to be translated into a language other than English or French, the person for whom the order or document is being transmitted shall provide the required translation together with a certificate of the translator authenticating the accuracy of the translation. 2002, c. 9, s. 45.

Designated authority to carry out currency conversion

52 Where a support order or an application made in a reciprocating jurisdiction outside Canada and received by the Nova Scotia court under this Act refers to an amount of support that is not expressed in Canadian currency, the designated authority shall convert the amount into Canadian currency in accordance with the regulations. 2002, c. 9, s. 46.

Right of subrogation

53 (1) In this Section, “assistance” means a benefit, assistance or income support under the *Social Assistance Act* and *Employment Support and Income Assistance Act*.

(2) Any government or agency of government that is providing or has provided assistance to or on behalf of a person who is entitled to make a claim for support has the rights of a claimant or applicant under this Act for the following purposes:

- (a) obtaining support or a variation of support in the name of the government or the agency of the government;
- (b) obtaining reimbursement of the assistance provided to or on behalf of that person by the government or the agency of government;
- (c) sending an order to the designated authority for registration.

(3) Where a person who is required to pay support makes an application for a variation under Part IV, a government or agency of government has

the rights of the respondent with respect to the application for the following purposes if the government or the agency of government is providing or has provided assistance to or on behalf of the respondent:

- (a) to respond to the application for variation of the support order for that person;
- (b) to obtain reimbursement of the assistance provided to or on behalf of that person by the government or the agency of government. 2002, c. 9, s. 47.

Terminology

54 Where, in a proceeding under this Act, a document from a court in a reciprocating jurisdiction contains terminology different from the terminology in this Act or contains terminology or is in a form different than that customarily in use in the Nova Scotia court, the Nova Scotia court shall give a broad and liberal interpretation to the terminology or form so as to give effect to the document, including giving effect to statements contained in a document in accordance with subsections 57(3) and (4). 2002, c. 9, s. 48; 2022, c. 16, s. 19.

Judicial notice of law of reciprocating jurisdiction

55 (1) In a proceeding under this Act, the Nova Scotia court shall take judicial notice of the law of a reciprocating jurisdiction and, where required, apply it.

(2) An enactment of a reciprocating jurisdiction may be pleaded and proved for the purposes of this Act by producing a copy of the enactment received from the reciprocating jurisdiction. 2002, c. 9, s. 49.

Proof of appointment

56 In a proceeding under this Act, a document purporting to be signed by a judge, officer of a court or public officer in a reciprocating jurisdiction is, unless the contrary is proved, proof of the appointment, signature and authority of the person who signed it. 2002, c. 9, s. 50.

Receipt in evidence

57 (1) Statements in writing sworn or affirmed to by the maker, depositions or transcripts of evidence taken in a reciprocating jurisdiction are deemed to have been sworn or affirmed by an authority under Section 72 of the *Evidence Act* and may be received in evidence by a Nova Scotia court under this Act.

(2) Default in paying support or arrears of support may be proved by a sworn document made by a person who declares that the person has knowledge of, or information and belief concerning, the default or arrears.

(3) Where a document from a reciprocating jurisdiction corresponding to a support application described in subsection 8(2) or a support-variation application described in subsection 32(2) has not been sworn to or affirmed, the Nova Scotia court may receive the document in evidence as proof of the content of the document in the absence of evidence to the contrary if

(a) the document includes a statement by the claimant or applicant declaring that the matters set out in the document are true; and

(b) the document was transmitted by an appropriate authority in a reciprocating jurisdiction to the designated authority in accordance with the regulations.

(4) Where the Nova Scotia court is not satisfied with the authenticity or integrity of the document referred to in subsection (3), it may require the claimant or applicant to

(a) swear to or affirm the document;

(b) provide a sworn or affirmed statement that attests to the truth of the statements set out in the document; or

(c) appear before the Nova Scotia court by telephone or other means of technology to

(i) swear or affirm that the contents of the document are true, or

(ii) give oral evidence. 2002, c. 9, s. 51; 2022, c. 16, s. 20.

Spouses as witnesses

58 Spouses are competent and compellable witnesses against each other in proceedings under this Act. 2002, c. 9, s. 52.

Other remedies not impaired

59 This Act does not impair any other remedy available to a person, the Province, a province of Canada, a jurisdiction outside Canada or a political subdivision or official agency of the Province, of a province of Canada or of a jurisdiction outside Canada. 2002, c. 9, s. 53.

Request to locate

60 (1) In this Section,

“interjurisdictional application” means a support application, a support-variation application or a request to register a support order made in a reciprocating jurisdiction under this Act;

“request to locate” means a written request to locate a person for the purpose of facilitating a proceeding relating to the establishment, variation, registration or enforcement of a support order.

(2) This Section binds the Crown in right of the Province.

(3) Where the designated authority receives a request to locate from an appropriate authority in a reciprocating jurisdiction, the designated authority may request a public body, including the Crown in right of the Province, to provide in writing any information in the possession or control of the public body, including the Crown, respecting the whereabouts of a person who is named in the request to locate to enable the appropriate authority to determine if an interjurisdictional application should be sent to the Province.

(4) Where the designated authority receives a request to locate from an appropriate authority in a reciprocating jurisdiction, the designated authority may respond to the request by advising the appropriate authority whether the person has been located in the Province, but the designated authority may not disclose specific information concerning the person's location.

(5) Upon receiving an interjurisdictional application, the designated authority may request a public body, including the Crown in right of the Province, to provide in writing any information in the possession or control of the public body, including the Crown, respecting the whereabouts of a person named in the application, to the designated authority to locate the person for the purpose of facilitating service of notice of the interjurisdictional application on the person.

(6) Information received or disclosed under this Section by the designated authority or another person may be used or disclosed for the purpose of carrying out duties and powers in accordance with this Act and the regulations but is otherwise confidential.

(7) A public body, including the Crown in right of the Province, that receives a request for information under this Section shall provide the information within 14 days of the day on which the request is received.

(8) Where, on application to a court, it appears that the designated authority has been refused information after making a request pursuant to this Section, the court may order a public body, including the Crown in right of the Province, to provide the designated authority with the information.

(9) This Section applies notwithstanding any other Act or regulation and notwithstanding any common-law rule of confidentiality except solicitor-client privilege.

(10) No action lies against any person or public body, including the Crown in right of the Province and a servant or agent of the Crown, who provides information in accordance with this Section.

(11) Any person or public body, including the Crown in right of the Province and a servant or agent of the Crown, who knowingly withholds, misleads or gives false information to the designated authority or in response to an order of the court pursuant to this Section is guilty of an offence and liable on summary conviction to a fine of not more than \$2,000 or to imprisonment for not more than six months, or to both a fine and imprisonment.

(12) The following records are not required to be provided to the designated authority under this Section:

- (a) a record of a person acting in a judicial or quasi-judicial capacity, such as a note, communication or draft decision;
- (b) any record sealed by court order or judicial direction;
- (c) a judicial administration record as defined in the *Freedom of Information and Protection of Privacy Act*. 2012, c. 24, s. 22.

Regulations respecting reciprocating jurisdictions

61 (1) Where the Governor in Council is satisfied that laws are or will be in effect in a jurisdiction for the reciprocal enforcement of support orders made in the Province on a basis substantially similar to this Act, the Governor in Council may make regulations declaring that jurisdiction to be a reciprocating jurisdiction.

(2) In declaring a jurisdiction to be a reciprocating jurisdiction under subsection (1), the Governor in Council may impose any conditions with respect to the enforcement and recognition of support orders made or registered in that jurisdiction.

(3) The Governor in Council may, by regulation, revoke a declaration made under subsection (1), and the jurisdiction to which the revocation relates ceases to be a reciprocating jurisdiction for the purpose of this Act. 2002, c. 9, s. 54.

Regulations

62 The Governor in Council may make regulations

- (a) respecting notices, information and documents required by this Act;
- (b) respecting the serving or giving of notices, information and documents under this Act;
- (c) respecting proceedings under this Act;
- (d) respecting conversion into Canadian currency for the purpose of Sections 24 and 52;
- (e) respecting forms for the purpose of this Act;
- (f) prescribing anything that is referred to in this Act as being prescribed;
- (g) defining any word or expression used but not defined in this Act;
- (h) respecting any matter the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Act. 2002, c. 9, s. 55; 2012, c. 24, s. 23; 2012, c. 62, s. 2.

Regulations Act

63 The exercise by the Governor in Council of the authority contained in Sections 61 and 62 is a regulation within the meaning of the *Regulations Act*. 2002, c. 9, s. 56.

Application of former Act

64 (1) An order that was made or registered under the former Act remains effective and may be varied, enforced or otherwise dealt with as if it had been made or registered under this Act.

(2) Where the respondent received notice of a hearing to consider a provisional order or a provisional variation order or notice of registration of a final

order under the former Act before March 31, 2003, the matter must be dealt with in accordance with the former Act as if it had not been repealed.

(3) Where a person who habitually resides in the Province applied for a provisional order or a provisional variation order under the former Act before March 31, 2003, the application continues under the former Act as if it had not been repealed.

(4) Where a final order was received for registration under the former Act before March 31, 2003, but, on that day, has not yet been registered, the order must be dealt with in accordance with this Act as if it had been received under Part III.

(5) Where a provisional order or a provisional variation order was received under the former Act before March 31, 2003, but, on that day, the respondent had not received notice of the hearing to consider the order, the order must be dealt with in accordance with this Act as if it had been received under Part III or Part IV, as the case may be. 2002, c. 9, s. 57; 2012, c. 24, s. 24.

CHAPTER I-15

**An Act to Implement
the Hague Convention on the Civil Aspects
of International Child Abduction**

Table of Contents

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

	Section
Short title.....	1
Interpretation.....	2
Effective date of Convention	3
Crown not bound to assume costs.....	4
Central authority	5
Application to court	6
Declaration that Convention applies.....	7
Publication of effective date of Convention	8
Regulations.....	9
Conflict with other Acts	10
Schedule	

Short title

1 This Act may be cited as the *International Child Abduction Act*. R.S., c. 67, s. 1.

Interpretation

2 In this Act, “Convention” means the Convention on the Civil Aspects of International Child Abduction set out in the Schedule to this Act. R.S., c. 67, s. 2.

Effective date of Convention

3 On, from and after the date the Convention enters into force in respect of the Province as determined by the Convention, except as provided in Section 4, the Convention is in force in the Province and the provisions thereof are law in the Province. R.S., c. 67, s. 3.

Crown not bound to assume costs

4 The Crown is not bound to assume any cost resulting under the Convention from the participation of legal counsel or advisers or from court proceedings except in accordance with the *Legal Aid Act*. R.S., c. 67, s. 4.

Central authority

5 The Attorney General is the central authority for the Province for the purpose of the Convention. R.S., c. 67, s. 5.

Application to court

6 An application may be made to a court in pursuance of a right or an obligation under the Convention. R.S., c. 67, s. 6.

Declaration that Convention applies

7 The Attorney General shall request the Government of Canada to submit a declaration to the Ministry for Foreign Affairs of the Kingdom of the Netherlands declaring that the Convention extends to the Province. R.S., c. 67, s. 7.

Publication of effective date of Convention

8 The Attorney General shall cause to be published in the Royal Gazette the date the Convention comes into force in the Province. R.S., c. 67, s. 8.

Regulations

9 The Governor in Council may make such regulations as are necessary to carry out the intent and purpose of this Act. R.S., c. 67, s. 9.

Conflict with other Acts

10 Where there is a conflict between this Act and any other enactment, this Act prevails. R.S., c. 67, s. 10.

SCHEDULE

CONVENTION ON THE CIVIL ASPECTS
OF INTERNATIONAL CHILD ABDUCTION

The States signatory to the present Convention,

Firmly convinced that the interests of children are of paramount importance in matters relating to their custody,

Desiring to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access,

Have resolved to conclude a Convention to this effect, and have agreed upon the following provisions:

CHAPTER I — SCOPE OF THE CONVENTION

Article 1

The objects of the present Convention are:

- (a) to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and
- (b) to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.

Article 2

Contracting States shall take all appropriate measures to secure within their territories the implementation of the objects of the Convention. For this purpose they shall use the most expeditious procedures available.

Article 3

The removal or the retention of a child is to be considered wrongful where:

- (a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and
- (b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in sub-paragraph (a) above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

Article 4

The Convention shall apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights. The Convention shall cease to apply when the child attains the age of 16 years.

Article 5

For the purposes of this Convention:

- (a) “rights of custody” shall include rights relating to the care of the person of the child and, in particular, the right to determine the child’s place of residence;
- (b) “rights of access” shall include the right to take a child for a limited period of time to a place other than the child’s habitual residence.

CHAPTER II — CENTRAL AUTHORITIES

Article 6

A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.

Federal States, States with more than one system of law or States having autonomous territorial organizations shall be free to appoint more than one Central Authority and to specify the territorial extent of their powers. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which applications may be addressed for transmission to the appropriate Central Authority within that State.

Article 7

Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this Convention.

In particular, either directly or through any intermediary, they shall take all appropriate measures:

- (a) to discover the whereabouts of a child who has been wrongfully removed or retained;
- (b) to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures;
- (c) to secure the voluntary return of the child or to bring about an amicable resolution of the issues;
- (d) to exchange, where desirable, information relating to the social background of the child;
- (e) to provide information of a general character as to the law of their State in connection with the application of the Convention;

(f) to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organizing or securing the effective exercise of rights of access;

(g) where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers;

(h) to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;

(i) to keep each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacles to its application.

CHAPTER III — RETURN OF CHILDREN

Article 8

Any person, institution or other body claiming that a child has been removed or retained in breach of custody rights may apply either to the Central Authority of the child's habitual residence or to the Central Authority of any other Contracting State for assistance in securing the return of the child.

The application shall contain:

(a) information concerning the identity of the applicant, of the child and of the person alleged to have removed or retained the child;

(b) where available, the date of birth of the child;

(c) the grounds on which the applicant's claim for return of the child is based;

(d) all available information relating to the whereabouts of the child and the identity of the person with whom the child is presumed to be.

The application may be accompanied or supplemented by:

(e) an authenticated copy of any relevant decision or agreement;

(f) a certificate or an affidavit emanating from a Central Authority, or other competent authority of the State of the child's habitual residence, or from a qualified person, concerning the relevant law of that State;

(g) any other relevant document.

Article 9

If the Central Authority which receives an application referred to in Article 8 has reason to believe that the child is in another Contracting State, it shall directly and without delay transmit the application to the Central Authority of that Contracting State and inform the requesting Central Authority, or the applicant, as the case may be.

Article 10

The Central Authority of the State where the child is shall take or cause to be taken all appropriate measures in order to obtain the voluntary return of the child.

Article 11

The judicial or administrative authorities of Contracting States shall act expeditiously in proceedings for the return of children.

If the judicial or administrative authority concerned has not reached a decision within six weeks from the date of commencement of the proceedings, the applicant or the Central Authority of the requested State, on its own initiative or if asked by the Central Authority of the requesting State, shall have the right to request a statement of the reasons for the delay. If a reply is received by the Central Authority of the requested State, that Authority shall trans-

mit the reply to the Central Authority of the requesting State, or to the applicant, as the case may be.

Article 12

Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.

The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.

Where the judicial or administrative authority in the requested State has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child.

Article 13

Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that:

- (a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or
- (b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.

Article 14

In ascertaining whether there has been a wrongful removal or retention within the meaning of Article 3, the judicial or administrative authorities of the requested State may take notice directly of the law of, and of judicial or administrative decisions, formally recognized or not in the State of the habitual residence of the child, without recourse to the specific procedures for the proof of that law or for the recognition of foreign decisions which would otherwise be applicable.

Article 15

The judicial or administrative authorities of a Contracting State may, prior to the making of an order for the return of the child, request that the applicant obtain from the authorities of the State of the habitual residence of the child a decision or other determination that the removal or retention was wrongful within the meaning of Article 3 of the Convention, where such a decision or determination may be obtained in that State. The Central Authorities of the Contracting States shall so far as practicable assist applicants to obtain such a decision or determination.

Article 16

After receiving notice of a wrongful removal or retention of a child in the sense of Article 3, the judicial or administrative authorities of the Contracting State to which the child has been removed or in which it has been retained shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention or unless an application under this Convention is not lodged within a reasonable time following receipt of the notice.

Article 17

The sole fact that a decision relating to custody has been given in or is entitled to recognition in the requested State shall not be a ground for refusing to return a child under this Convention, but the judicial or administrative authorities of the requested State may take account of the reasons for that decision in applying this Convention.

Article 18

The provisions of this Chapter do not limit the power of a judicial or administrative authority to order the return of the child at any time.

Article 19

A decision under this Convention concerning the return of the child shall not be taken to be a determination on the merits of any custody issue.

Article 20

The return of the child under the provisions of Article 12 may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms.

CHAPTER IV — RIGHTS OF ACCESS

Article 21

An application to make arrangements for organizing or securing the effective exercise of rights of access may be presented to the Central Authorities of the Contracting States in the same way as an application for the return of a child.

The Central Authorities are bound by the obligations of co-operation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfilment of any conditions to which the exercise of those rights may be subject. The Central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights.

The Central Authorities, either directly or through intermediaries, may initiate or assist in the institution of proceedings with a view to organizing or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject.

CHAPTER V — GENERAL PROVISIONS

Article 22

No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in the judicial or administrative proceedings falling within the scope of this Convention.

Article 23

No legalization or similar formality may be required in the context of this Convention.

Article 24

Any application, communication or other document sent to the Central Authority of the requested State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the requested State or, where that is not feasible, a translation into French or English.

However, a Contracting State may, by making a reservation in accordance with Article 42, object to the use of either French or English, but not both, in any application, communication or other document sent to its Central Authority.

Article 25

Nationals of the Contracting State and persons who are habitually resident within those States shall be entitled in matters concerned with the application of this Convention to legal aid and advice in any other Contracting State on the same conditions as if they themselves were nationals of and habitually resident in that State.

Article 26

Each Central Authority shall bear its own costs in applying this Convention.

Central Authorities and other public services of Contracting States shall not impose any charges in relation to applications submitted under this Convention. In particular, they may not require any payment from the applicant towards the costs and expenses of the proceedings or, where applicable, those arising from the participation of legal counsel or advisers. However, they may require the payment of the expenses incurred or to be incurred in implementing the return of the child.

However, a Contracting State may, by making a reservation in accordance with Article 42, declare that it shall not be bound to assume any costs referred to in the preceding paragraph resulting from the participation of legal counsel or advisers or from court proceedings, except insofar as those costs may be covered by its system of legal aid and advice.

Upon ordering the return of a child or issuing an order concerning rights of access under this Convention, the judicial or administrative authorities may, where appropriate, direct the person who removed or retained the child, or who prevented the exercise of rights of access, to pay necessary expenses incurred by or on behalf of the applicant, including travel expenses, any costs incurred or payments made for locating the child, the costs of legal representation of the applicant, and those of returning the child.

Article 27

When it is manifest that the requirements of this Convention are not fulfilled or that the application is otherwise not well founded, a Central Authority is not bound to accept the application. In that case, the Central Authority shall forthwith inform the applicant or the Central Authority through which the application was submitted, as the case may be, of its reasons.

Article 28

A Central Authority may require that the application be accompanied by a written authorization empowering it to act on behalf of the applicant, or to designate a representative so to act.

Article 29

This Convention shall not preclude any person, institution or body who claims that there has been a breach of custody or access rights within the meaning of Article 3 or 21 from applying directly to the judicial or administrative authorities of a Contracting State, whether or not under the provisions of this Convention.

Article 30

Any application submitted to the Central Authorities or directly to the judicial or administrative authorities of a Contracting State in accordance with the terms of this Conven-

tion, together with documents and any other information appended thereto or provided by a Central Authority, shall be admissible in the courts or administrative authorities of the Contracting States.

Article 31

In relation to a State which in matters of custody of children has two or more systems of law applicable in different territorial units:

- (a) any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;
- (b) any reference to the law of the State of habitual residence shall be construed as referring to the law of the territorial unit in that State where the child habitually resides.

Article 32

In relation to a State which in matters of custody of children has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

Article 33

A State within which different territorial units have their own rules of law in respect of custody of children shall not be bound to apply this Convention where a State with a unified system of law would not be bound to do so.

Article 34

This Convention shall take priority in matters within its scope over the Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors, as between Parties to both Conventions. Otherwise the present Convention shall not restrict the application of an international instrument in force between the State of origin and the State addressed or other law of the State addressed for the purposes of obtaining the return of a child who has been wrongfully removed or retained or of organizing access rights.

Article 35

This Convention shall apply as between Contracting States only to wrongful removals or retentions occurring after its entry into force in those States.

Where a declaration has been made under Article 39 or 40, the reference in the preceding paragraph to a Contracting State shall be taken to refer to the territorial unit or units in relation to which this Convention applies.

Article 36

Nothing in this Convention shall prevent two or more Contracting States, in order to limit the restrictions to which the return of the child may be subject, from agreeing among themselves to derogate from any provisions of this Convention which may imply such a restriction.

CHAPTER VI — FINAL CLAUSES

Article 37

The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Fourteenth Session.

It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 38

Any other State may accede to the Convention.

The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

The Convention shall enter into force for a state acceding to it on the first day of the third calendar month after the deposit of its instrument of accession.

The accession will have effect only as regards the relations between the acceding State and such Contracting States as will have declared their acceptance of the accession. Such a declaration will also have to be made by any Member State ratifying, accepting or approving the Convention after an accession. Such declaration shall be deposited at the Ministry of Foreign Affairs of the Kingdom of the Netherlands; this Ministry shall forward, through diplomatic channels, a certified copy to each of the Contracting States.

The Convention will enter into force as between the acceding State and the State that has declared its acceptance of the accession on the first day of the third calendar month after the deposit of the declaration of acceptance.

Article 39

Any State may, at the time of signature, ratification, acceptance, approval or accession, declare that the Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect at the time the Convention enters into force for that State.

Such declaration, as well as any subsequent extension, shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 40

If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

Any such declaration shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands and shall state expressly the territorial units to which the Convention applies.

Article 41

Where a Contracting State has a system of government under which executive, judicial and legislative powers are distributed between central and other authorities within that State, its signature or ratification, acceptance or approval of, or accession to this Convention, or its making of any declaration in terms of Article 40 shall carry no implication as to the internal distribution of powers within that State.

Article 42

Any State may, not later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 39 or 40, make one or both of the reservations provided for in Article 24 and Article 26, third paragraph. No other reservation shall be permitted.

Any State may at any time withdraw a reservation it has made. The withdrawal shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.

Article 43

The Convention shall enter into force on the first day of the third calendar month after the deposit of the third instrument of ratification, acceptance, approval or accession referred to in Articles 37 and 38.

Thereafter the Convention shall enter into force:

1. for each State ratifying, accepting, approving or acceding to it subsequently, on the first day of the third calendar month after the deposit of its instrument of ratification, acceptance, approval or accession;
2. for any territory or territorial unit to which the Convention has been extended in conformity with Article 39 or 40, on the first day of the third calendar month after the notification referred to in that Article.

Article 44

The Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 43 even for States which subsequently have ratified, accepted, approved it or acceded to it.

If there has been no denunciation, it shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands at least six months before the expiry of the five year period. It may be limited to certain of the territories or territorial units to which the Convention applies.

The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

Article 45

The Ministry of Foreign Affairs of the Kingdom of the Netherlands shall notify the States Members of the Conference, and the States which have acceded in accordance with Article 38, of the following:

1. the signatures and ratifications, acceptances and approvals referred to in Article 37;
2. the accessions referred to in Article 38;
3. the date on which the Convention enters into force in accordance with Article 43;
4. the extensions referred to in Article 39;
5. the declarations referred to in Articles 38 and 40;
6. the reservations referred to in Article 24 and Article 26, third paragraph, and the withdrawals referred to in Article 42;
7. the denunciations referred to in Article 44.

Done at The Hague, on the 25th day of October, 1980.

R.S., c. 67, Sch.

CHAPTER I-16

**An Act to Implement the Convention
on the Recognition and Enforcement of
Foreign Arbitral Awards and to
Adopt the Model Law on
International Commercial Arbitration**

Table of Contents

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

	Section
Short title.....	1
Interpretation.....	2
PART I	
Foreign Arbitral Awards	
Application of Convention.....	3
Application to Court.....	4
PART II	
International Commercial Arbitration	
Application of International Law.....	5
Encouragement of settlement.....	6
Where arbitrator replaced.....	7
Failure to make designation.....	8
Power of Court.....	9
Article 6.....	10
PART III	
General	
Stay of proceedings.....	11
Act binds Crown.....	12
Interpretation.....	13
Practice and procedure.....	14
Regulations.....	15
Regulations Act.....	16
Schedule A	
Schedule B	

Short title

1 This Act may be cited as the *International Commercial Arbitration Act*. R.S., c. 234, s. 1.

Interpretation

2 (1) In this Act,

“Convention” means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, adopted by the United Nations Conference on International Commercial Arbitration in New York on June 10, 1958, as set out in Schedule A;

“International Law” means the Model Law On International Commercial Arbitration, adopted by the United Nations Commission on International Trade Law on June 21, 1985, as set out in Schedule B.

(2) Words and expressions used in this Act have the same meaning as the corresponding words and expressions in the Convention and the International Law, as the case may be. R.S., c. 234, s. 2.

PART I

FOREIGN ARBITRAL AWARDS

Application of Convention

3 (1) Subject to this Act, the Convention applies in the Province.

(2) The Convention applies to arbitral awards and arbitration agreements whether made before or after August 10, 1986, but applies only in respect of differences arising out of commercial legal relationships, whether contractual or not. R.S., c. 234, s. 3.

Application to Court

4 For the purpose of seeking recognition of an arbitral award pursuant to the Convention, an application must be made to the Supreme Court of Nova Scotia. R.S., c. 234, s. 4.

PART II

INTERNATIONAL COMMERCIAL ARBITRATION

Application of International Law

5 (1) Subject to this Act, the International Law applies in the Province.

(2) The International Law applies to international commercial arbitration agreements and awards, whether made before or after August 10, 1986. R.S., c. 234, s. 5.

Encouragement of settlement

6 For the purpose of encouraging settlement of a dispute, an arbitral tribunal may, with the agreement of the parties, employ mediation, conciliation or other procedures at any time during the arbitration proceedings and, with the agreement of the parties, the members of the arbitral tribunal are not disqualified from resuming their roles as arbitrators by reason of the mediation, conciliation or other procedure. R.S., c. 234, s. 6.

Where arbitrator replaced

7 (1) Unless the parties otherwise agree, if an arbitrator is replaced or removed in accordance with the International Law, any hearing held prior to the replacement or removal must be repeated.

(2) With respect to Article 15 of the International Law, the parties may remove an arbitrator at any time prior to the final award, regardless of how the arbitrator was appointed. R.S., c. 234, s. 7.

Failure to make designation

8 Notwithstanding Article 28(2) of the International Law, if the parties fail to make a designation pursuant to Article 28(1) of the International Law, the arbitral tribunal shall apply the rules of law it considers to be appropriate given all the circumstances respecting the dispute. R.S., c. 234, s. 8.

Power of Court

9 (1) The Supreme Court of Nova Scotia, upon application of the parties to two or more arbitration proceedings, may order

- (a) the arbitration proceedings to be consolidated, on terms it considers just;
- (b) the arbitration proceedings to be heard at the same time, or one immediately after another;
- (c) any of the arbitration proceedings to be stayed until after the determination of any other of them.

(2) Where the Court orders arbitration proceedings to be consolidated pursuant to clause (1)(a) and all the parties to the consolidated arbitration proceedings are in agreement as to the choice of the arbitral tribunal for that arbitration proceeding, the arbitral tribunal shall be appointed by the Court, but if all the parties cannot agree, the Court may appoint the arbitral tribunal for that arbitration proceeding.

(3) Nothing in this Section is to be construed as preventing the parties to two or more arbitration proceedings from agreeing to consolidate those arbitration proceedings and taking such steps as are necessary to effect that consolidation. R.S., c. 234, s. 9.

Article 6

10 (1) The functions referred to in Article 6 of the International Law shall be performed by the Supreme Court of Nova Scotia.

(2) For the purposes of the International Law, a reference to “court” or “competent court”, where in the context it means a court in the Province, means the Supreme Court of Nova Scotia except where the context otherwise requires. R.S., c. 234, s. 10.

PART III

GENERAL

Stay of proceedings

11 Where, pursuant to Article II (3) of the Convention or Article 8 of the International Law, a court refers the parties to arbitration, the proceedings of the court are stayed with respect to the matters to which the arbitration relates. R.S., c. 234, s. 11.

Act binds Crown

12 (1) This Act binds the Crown in right of the Province.

(2) An award recognized pursuant to this Act is enforceable against the Crown in right of the Province in the same manner and to the same extent as a judgment is enforceable against the Crown in right of the Province. R.S., c. 234, s. 12.

Interpretation

13 (1) This Act must be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the Act in their context and in the light of its objects and purposes.

(2) In applying subsection (1) to the International Law, recourse may be had to

(a) the Report of the United Nations Commission on International Trade Law on the work of its 18th session (June 3-21, 1985);

(b) the International Commercial Arbitration Commentary on Draft Text of a Model Law on International Commercial Arbitration,

as published in the Royal Gazette. R.S., c. 234, s. 13.

Practice and procedure

14 (1) The judges of the Supreme Court of Nova Scotia or a majority of them may make rules respecting the practice and procedure, including costs, in judicial proceedings pursuant to this Act.

(2) Until rules are made pursuant to subsection (1), the *Civil Procedure Rules*, including rules as to costs, apply with necessary changes to judicial proceedings pursuant to this Act.

(3) Rules made pursuant to subsection (1) are rules as defined by the *Judicature Act*. R.S., c. 234, s. 14.

Regulations

15 The Governor in Council may make such regulations as are necessary or advisable to carry out the intent and purpose of this Act. R.S., c. 234, s. 15.

Regulations Act

16 Rules made pursuant to Section 14 and the exercise by the Governor in Council of the authority contained in Section 15 are regulations within the meaning of the *Regulations Act*. R.S., c. 234, s. 16.

SCHEDULE A

CONVENTION ON THE RECOGNITION AND
ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Article I

1. This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.
2. The term "arbitral awards" shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.
3. When signing, ratifying or acceding to this Convention, or notifying extension under article X hereof, any State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration.

Article II

1. Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject-matter capable of settlement by arbitration.
2. The term "agreement in writing" shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.
3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

Article III

Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

Article IV

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:
 - (a) The duly authenticated original award or a duly certified copy thereof;
 - (b) The original agreement referred to in article II or a duly certified copy thereof.
2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

Article V

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:
 - (a) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
 - (b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or
 - (c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or
 - (d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
 - (e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.
2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:
 - (a) The subject-matter of the difference is not capable of settlement by arbitration under the law of that country; or
 - (b) The recognition or enforcement of the award would be contrary to the public policy of that country.

Article VI

If an application for the setting aside or suspension of the award has been made to a competent authority referred to in article V(1)(e), the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

Article VII

1. The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.
2. The Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 shall cease to have effect between Contracting States on their becoming bound and to the extent that they become bound, by this Convention.

Article VIII

1. This Convention shall be open until 31 December 1958 for signature on behalf of any Member of the United Nations and also on behalf of any other State which is or hereafter becomes a member of any specialized agency of the United Nations, or which is or hereafter becomes a party to the Statute of the International Court of Justice, or any other State to which an invitation has been addressed by the General Assembly of the United Nations.
2. This Convention shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article IX

1. This Convention shall be open for accession to all States referred to in article VIII.
2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article X

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.
2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.
3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

Article XI

In the case of a federal or non-unitary State, the following provisions shall apply:

- (a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal authority, the obligations of the federal Government shall to this extent be the same as those of Contracting States which are not federal States;

(b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent states or provinces which are not, under the constitutional system of the federation, bound to take legislative action, the federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of constituent states or provinces at the earliest possible moment;

(c) A federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the federation and its constituent units in regard to any particular provision of this Convention, showing the extent to which effect has been given to that provision by legislative or other action.

Article XII

1. This Convention shall come into force on the ninetieth day following the date of deposit of the third instrument of ratification or accession.
2. For each State ratifying or acceding to this Convention after the deposit of the third instrument of ratification or accession, this Convention shall enter into force on the ninetieth day after deposit by such State of its instrument of ratification or accession.

Article XIII

1. Any Contracting State may denounce this Convention by a written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.
2. Any State which has made a declaration or notification under article X may, at any time thereafter, by notification to the Secretary-General of the United Nations, declare that this Convention shall cease to extend to the territory concerned one year after the date of the receipt of the notification by the Secretary-General.
3. This Convention shall continue to be applicable to arbitral awards in respect of which recognition or enforcement proceedings have been instituted before the denunciation takes effect.

Article XIV

A Contracting State shall not be entitled to avail itself of the present Convention against other Contracting States except to the extent that it is itself bound to apply the Convention.

Article XV

The Secretary-General of the United Nations shall notify the States contemplated in article VIII of the following:

- (a) Signatures and ratifications in accordance with article VIII;
- (b) Accessions in accordance with article IX;
- (c) Declarations and notifications under articles I, X and XI;
- (d) The date upon which this Convention enters into force in accordance with article XII;
- (e) Denunciations and notifications in accordance with article XIII.

Article XVI

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit a certified copy of this Convention to the States contemplated in article VIII.

R.S., c. 234, Sch. A.

SCHEDULE B

UNCITRAL MODEL LAW
ON INTERNATIONAL COMMERCIAL ARBITRATION

(As adopted by the United Nations Commission
on International Trade Law on 21 June 1985)

CHAPTER I. GENERAL PROVISIONS

Article 1. Scope of application

- (1) This Law applies to international commercial arbitration, subject to any agreement in force between this State and any other State or States.
- (2) The provisions of this Law, except articles 8, 9, 35 and 36, apply only if the place of arbitration is in the territory of this State.
- (3) An arbitration is international if:
 - (a) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States; or
 - (b) one of the following places is situated outside the State in which the parties have their places of business:
 - (i) the place of arbitration if determined in, or pursuant to, the arbitration agreement;
 - (ii) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected; or
 - (c) the parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one country.
- (4) For the purposes of paragraph (3) of this article:
 - (a) if a party has more than one place of business, the place of business is that which has the closest relationship to the arbitration agreement;
 - (b) if a party does not have a place of business, reference is to be made to his habitual residence.
- (5) This Law shall not affect any other law of this State by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only according to provisions other than those of this Law.

Article 2. Definitions and rules of interpretation

For the purposes of this Law:

- (a) "arbitration" means any arbitration whether or not administered by a permanent arbitral institution;

- (b) “arbitral tribunal” means a sole arbitrator or a panel of arbitrators;
- (c) “court” means a body or organ of the judicial system of a State;
- (d) where a provision of this Law, except article 28, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorize a third party, including an institution, to make that determination;
- (e) where a provision of this Law refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties such agreement includes any arbitration rules referred to in that agreement;
- (f) where a provision of this Law, other than in articles 25(a) and 32(2)(a), refers to a claim, it also applies to a counter-claim, and where it refers to a defence, it also applies to a defence to such counter-claim.

Article 3. Receipt of written communications

- (1) Unless otherwise agreed by the parties:
 - (a) any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence or mailing address; if none of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee’s last-known place of business, habitual residence or mailing address by registered letter or any other means which provides a record of the attempt to deliver it;
 - (b) the communication is deemed to have been received on the day it is so delivered.
- (2) The provisions of this article do not apply to communications in court proceedings.

Article 4. Waiver of right to object

A party who knows that any provision of this Law from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time-limit is provided therefor, within such period of time, shall be deemed to have waived his right to object.

Article 5. Extent of court intervention

In matters governed by this Law, no court shall intervene except where so provided in this Law.

Article 6. Court or other authority for certain functions of arbitration assistance and supervision

The functions referred to in articles 11(3), 11(4), 13(3), 14, 16(3) and 34(2) shall be performed by . . . [Each State enacting this model law specifies the court, courts or, where referred to therein, other authority competent to perform these functions.]

CHAPTER II. ARBITRATION AGREEMENT

Article 7. Definition and form of arbitration agreement

- (1) “Arbitration agreement” is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(2) The arbitration agreement shall be in writing. An agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract.

Article 8. Arbitration agreement and substantive claim before court

(1) A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

(2) Where an action referred to in paragraph (1) of this article has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court.

Article 9. Arbitration agreement and interim measures by court

It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a court an interim measure of protection and for a court to grant such measure.

CHAPTER III. COMPOSITION OF ARBITRAL TRIBUNAL

Article 10. Number of arbitrators

- (1) The parties are free to determine the number of arbitrators.
- (2) Failing such determination, the number of arbitrators shall be three.

Article 11. Appointment of arbitrators

- (1) No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.
- (2) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of paragraphs (4) and (5) of this article.
- (3) Failing such agreement,
 - (a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the court or other authority specified in article 6;
 - (b) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the court or other authority specified in article 6.
- (4) Where, under an appointment procedure agreed upon by the parties,
 - (a) a party fails to act as required under such procedure, or
 - (b) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure, or

(c) a third party, including an institution, fails to perform any function entrusted to it under such procedure,

any party may request the court or other authority specified in article 6 to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(5) A decision on a matter entrusted by paragraph (3) or (4) of this article to the court or other authority specified in article 6 shall be subject to no appeal. The court or other authority, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.

Article 12. Grounds for challenge

(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him.

(2) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

Article 13. Challenge procedure

(1) The parties are free to agree on a procedure for challenging an arbitrator, subject to the provisions of paragraph (3) of this article.

(2) Failing such agreement, a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in article 12(2), send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

(3) If a challenge under any procedure agreed upon by the parties or under the procedure of paragraph (2) of this article is not successful, the challenging party may request, within thirty days after having received notice of the decision rejecting the challenge, the court or other authority specified in article 6 to decide on the challenge, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

Article 14. Failure or impossibility to act

(1) If an arbitrator becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay, his mandate terminates if he withdraws from his office or if the parties agree on the termination. Otherwise, if a controversy remains concerning any of these grounds, any party may request the court or other authority specified in article 6 to decide on the termination of the mandate, which decision shall be subject to no appeal.

(2) If, under this article or article 13(2), an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in this article or article 12(2).

Article 15. Appointment of substitute arbitrator

Where the mandate of an arbitrator terminates under article 13 or 14 or because of his withdrawal from office for any other reason or because of the revocation of his mandate by agreement of the parties or in any other case of termination of his mandate, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

CHAPTER IV. JURISDICTION OF ARBITRAL TRIBUNAL

Article 16. Competence of arbitral tribunal to rule on its jurisdiction

(1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence. A party is not precluded from raising such a plea by the fact that he has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

(3) The arbitral tribunal may rule on a plea referred to in paragraph (2) of this article either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within thirty days after having received notice of that ruling, the court specified in article 6 to decide the matter, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

Article 17. Power of arbitral tribunal to order interim measures

Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute. The arbitral tribunal may require any party to provide appropriate security in connection with such measure.

CHAPTER V. CONDUCT OF ARBITRAL PROCEEDINGS

Article 18. Equal treatment of parties

The parties shall be treated with equality and each party shall be given a full opportunity of presenting his case.

Article 19. Determination of rules of procedure

(1) Subject to the provisions of this Law, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

(2) Failing such agreement, the arbitral tribunal may, subject to the provisions of this Law, conduct the arbitration in such manner as it considers appropriate. The power conferred

upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

Article 20. Place of arbitration

(1) The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(2) Notwithstanding the provisions of paragraph (1) of this article, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

Article 21. Commencement of arbitral proceedings

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

Article 22. Language

(1) The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

(2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

Article 23. Statements of claim and defence

(1) Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of such statements. The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

(2) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.

Article 24. Hearings and written proceedings

(1) Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. However, unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.

(2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents.

(3) All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party. Also any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

Article 25. Default of a party

Unless otherwise agreed by the parties, if, without showing sufficient cause,

- (a) the claimant fails to communicate his statement of claim in accordance with article 23(1), the arbitral tribunal shall terminate the proceedings;
- (b) the respondent fails to communicate his statement of defence in accordance with article 23(1), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;
- (c) any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

Article 26. Expert appointed by arbitral tribunal

- (1) Unless otherwise agreed by the parties, the arbitral tribunal
 - (a) may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal;
 - (b) may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.
- (2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in a hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

Article 27. Court assistance in taking evidence

The arbitral tribunal or a party with the approval of the arbitral tribunal may request from a competent court of this State assistance in taking evidence. The court may execute the request within its competence and according to its rules on taking evidence.

CHAPTER VI. MAKING OF AWARD AND
TERMINATION OF PROCEEDINGS

Article 28. Rules applicable to substance of dispute

- (1) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules.
- (2) Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.
- (3) The arbitral tribunal shall decide ex aequo et bono or as amiable compositeur only if the parties have expressly authorized it to do so.
- (4) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

Article 29. Decision making by panel of arbitrators

In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members. However, questions of procedure may be decided by a presiding arbitrator, if so authorized by the parties or all members of the arbitral tribunal.

Article 30. Settlement

(1) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

(2) An award on agreed terms shall be made in accordance with the provisions of article 31 and shall state that it is an award. Such an award has the same status and effect as any other award on the merits of the case.

Article 31. Form and contents of award

(1) The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.

(2) The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under article 30.

(3) The award shall state its date and the place of arbitration as determined in accordance with article 20(1). The award shall be deemed to have been made at that place.

(4) After the award is made, a copy signed by the arbitrators in accordance with paragraph (1) of this article shall be delivered to each party.

Article 32. Termination of proceedings

(1) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with paragraph (2) of this article.

(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when

(a) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute;

(b) the parties agree on the termination of the proceedings;

(c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of articles 33 and 34(4).

Article 33. Correction and interpretation of award; additional award

(1) Within thirty days of receipt of the award, unless another period of time has been agreed upon by the parties:

(a) a party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature;

(b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within thirty days of receipt of the request. The interpretation shall form part of the award.

(2) The arbitral tribunal may correct any error of the type referred to in paragraph (1)(a) of this article on its own initiative within thirty days of the date of the award.

(3) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within thirty days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty days.

(4) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation or an additional award under paragraph (1) or (3) of this article.

(5) The provisions of article 31 shall apply to a correction or interpretation of the award or to an additional award.

CHAPTER VII. RECOURSE AGAINST AWARD

Article 34. Application for setting aside as exclusive recourse against arbitral award

(1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this article.

(2) An arbitral award may be set aside by the court specified in article 6 only if:

(a) the party making the application furnishes proof that:

(i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of this State; or

(ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or

(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law; or

(b) the court finds that:

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or

(ii) the award is in conflict with the public policy of this State.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made under article 33, from the date on which that request had been disposed of by the arbitral tribunal.

(4) The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

CHAPTER VIII. RECOGNITION AND ENFORCEMENT OF AWARDS

Article 35. Recognition and enforcement

(1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this article and of article 36.

(2) The party relying on an award or applying for its enforcement shall supply the duly authenticated original award or a duly certified copy thereof, and the original arbitration agreement referred to in article 7 or a duly certified copy thereof. If the award or agreement is not made in an official language of this State, the party shall supply a duly certified translation thereof into such language.

Article 36. Grounds for refusing recognition or enforcement

(1) Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only:

(a) at the request of the party against whom it is invoked, if that party furnishes to the competent court where recognition or enforcement is sought proof that:

(i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(ii) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(v) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or

(b) if the court finds that:

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or

(ii) the recognition or enforcement of the award would be contrary to the public policy of this State.

(2) If an application for setting aside or suspension of an award has been made to a court referred to in paragraph (1)(a)(v) of this article, the court where recognition or enforcement is sought may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.

R.S., c. 234, Sch. B.

CHAPTER I-17

**An Act to Implement the Convention on
International Interests in Mobile Equipment
in Matters Specific to Aircraft Equipment**

Table of Contents

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

	Section
Short title.....	1
Interpretation.....	2
Act prevails.....	3
Purpose of Act.....	4
Minister.....	5
Minister to request protocol to extend to Province.....	6
Minister may request Article 39 declaration.....	7
Minister may request Article 40 declaration.....	8
Application of Act to Crown.....	9
Act to have force of law.....	10
Supreme Court of Nova Scotia is relevant court.....	11
Regulations.....	12
Publication of Act coming into force and regulations.....	13
Schedule A	
Schedule B	

Short title

1 This Act may be cited as the *International Interests in Mobile Aircraft Equipment Act*. 2004, c. 5, s. 1.

Interpretation

2 (1) In this Act,

“Aircraft Protocol” means the *Protocol to the Convention on International Interests in Mobile Equipment in Matters Specific to Aircraft Equipment* that was opened for signature at Cape Town on November 16, 2001, the text of which is set out in Schedule B;

“Convention” means the *Convention on International Interests in Mobile Equipment* that was opened for signature at Cape Town on November 16, 2001, the text of which is set out in Schedule A;

“Minister” means the Minister of Justice.

(2) All words and expressions used in this Act have the same meaning as the corresponding words and expressions used in the Convention and the Aircraft Protocol.

(3) In interpreting the Convention and the Aircraft Protocol, recourse may be had to

(a) the Explanatory Report and Commentary on the Diplomatic Conference to Adopt a Mobile Equipment Convention and an Aircraft Protocol, held under the joint auspices of the International Civil Aviation Organization and the International Institute for the Unification of Private Law at Cape Town from October 29 to November 16, 2001; and

(b) the consolidated text of the Convention and the Protocol of which the Conference took note in its Resolution No. 1. 2004, c. 5, s. 2.

Act prevails

3 In the event of any inconsistency between this Act and any other law, this Act prevails to the extent of the inconsistency. 2004, c. 5, s. 3.

Purpose of Act

4 The purpose of the Act is to implement the provisions of the Convention and the Aircraft Protocol with regard to aircraft equipment. 2004, c. 5, s. 4.

Minister

5 The Minister is the member of the Executive Council responsible for the administration of this Act. 2004, c. 5, s. 5.

Minister to request protocol to extend to Province

6 The Minister shall request the Government of Canada to declare, in accordance with Article 52 of the Convention and Article XXIX of the Aircraft Protocol, that the Convention and the Aircraft Protocol extend to the Province. 2004, c. 5, s. 6.

Minister may request Article 39 declaration

7 (1) The Minister, at the time a request under Section 6 is made, may request the Government of Canada to make a declaration in accordance with Article 39 of the Convention in respect of the Province.

(2) The Minister, from time to time, may request the Government of Canada to make a subsequent declaration in accordance with Article 57 of the Convention and Article XXXIII of the Aircraft Protocol, in relation to Article 39 of the Convention, in respect of the Province. 2004, c. 5, s. 7.

Minister may request Article 40 declaration

8 (1) The Minister, at the time a request under Section 6 is made, may request the Government of Canada to make a declaration in accordance with Article 40 of the Convention in respect of the Province.

(2) The Minister, from time to time, may request the Government of Canada to make a subsequent declaration in accordance with Article 57 of the Convention and Article XXXIII of the Aircraft Protocol, in relation to Article 40 of the Convention, in respect of the Province. 2004, c. 5, s. 8.

Application of Act to Crown

9 This Act is binding on the Crown in right of the Province. 2004, c. 5, s. 9.

Act to have force of law

10 (1) The Convention, other than Articles 49 to 59, 61 and 62, and the Aircraft Protocol, other than paragraphs 1 and 2 of Article IX, paragraphs 1 and 2 of Article X and Articles XIII and XXVI to XXXVII, have the force of law in the Province.

(2) Subsection (1) applies on and after the day the Convention and the Aircraft Protocol enter into force in accordance with Articles 49 and 52 of the Convention and Articles XXVIII and XXIX of the Aircraft Protocol. 2004, c. 5, s. 10.

Supreme Court of Nova Scotia is relevant court

11 The Supreme Court of Nova Scotia is the relevant court for the purposes of Article 53 of the Convention. 2004, c. 5, s. 11.

Regulations

12 (1) The Governor in Council may make any regulations that are necessary to give effect to any of the provisions that have the force of law pursuant to subsection 10(1), including regulations

(a) prescribing categories of non-consensual rights and interests for the purposes of Article 39 of the Convention;

(b) prescribing categories of non-consensual rights and interests for the purposes of Article 40 of the Convention.

(2) Regulations made under subsection (1) apply

(a) in the case of regulations in relation to declarations referred to in subsections 7(1) and 8(1), on and after the day on which subsection 10(1) commences to apply as provided by subsection 10(2); and

(b) in the case of regulations in relation to subsequent declarations referred to in subsections 7(2) and 8(2), on and after the day on which the subsequent declarations take effect as provided by paragraph 2 of Article 57 of the Convention and paragraph 2 of Article XXXIII of the Aircraft Protocol.

(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*. 2004, c. 5, s. 12.

Publication of Act coming into force and regulations

13 (1) The Minister shall publish in the Royal Gazette a notice setting out the day on which the Convention and the Aircraft Protocol enter into force in the Province.

(2) The Minister shall publish in the Royal Gazette the regulations referred to in sub-paragraph 2(d) of Article 17 of the Convention, and any amendments to those regulations. 2004, c. 5, s. 13.

SCHEDULE A

CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT

THE STATES PARTIES TO THIS CONVENTION,

AWARE of the need to acquire and use mobile equipment of high value or particular economic significance and to facilitate the financing of the acquisition and use of such equipment in an efficient manner,

RECOGNISING the advantages of asset-based financing and leasing for this purpose and desiring to facilitate these types of transaction by establishing clear rules to govern them,

MINDFUL of the need to ensure that interests in such equipment are recognised and protected universally,

DESIRING to provide broad and mutual economic benefits for all interested parties,

BELIEVING that such rules must reflect the principles underlying asset-based financing and leasing and promote the autonomy of the parties necessary in these transactions,

CONSCIOUS of the need to establish a legal framework for international interests in such equipment and for that purpose to create an international registration system for their protection,

TAKING INTO CONSIDERATION the objectives and principles enunciated in existing Conventions relating to such equipment,

HAVE AGREED upon the following provisions:

CHAPTER I

SPHERE OF APPLICATION AND GENERAL PROVISIONS

Article 1 — Definitions

In this Convention, except where the context otherwise requires, the following terms are employed with the meanings set out below:

- (a) “agreement” means a security agreement, a title reservation agreement or a leasing agreement;
- (b) “assignment” means a contract which, whether by way of security or otherwise, confers on the assignee associated rights with or without a transfer of the related international interest;
- (c) “associated rights” means all rights to payment or other performance by a debtor under an agreement which are secured by or associated with the object;
- (d) “commencement of the insolvency proceedings” means the time at which the insolvency proceedings are deemed to commence under the applicable insolvency law;
- (e) “conditional buyer” means a buyer under a title reservation agreement;
- (f) “conditional seller” means a seller under a title reservation agreement;
- (g) “contract of sale” means a contract for the sale of an object by a seller to a buyer which is not an agreement as defined in (a) above;
- (h) “court” means a court of law or an administrative or arbitral tribunal established by a Contracting State;
- (i) “creditor” means a chargee under a security agreement, a conditional seller under a title reservation agreement or a lessor under a leasing agreement;
- (j) “debtor” means a chargor under a security agreement, a conditional buyer under a title reservation agreement, a lessee under a leasing agreement or a person whose interest in an object is burdened by a registrable non-consensual right or interest;

- (k) “insolvency administrator” means a person authorised to administer the reorganization or liquidation, including one authorised on an interim basis, and includes a debtor in possession if permitted by the applicable insolvency law;
- (l) “insolvency proceedings” means bankruptcy, liquidation or other collective judicial or administrative proceedings, including interim proceedings, in which the assets and affairs of the debtor are subject to control or supervision by a court for the purposes of reorganization or liquidation;
- (m) “interested persons” means:
- (i) the debtor,
 - (ii) any person who, for the purpose of assuring performance of any of the obligations in favour of the creditor, gives or issues a suretyship or demand guarantee or a standby letter of credit or any other form of credit insurance,
 - (iii) any other person having rights in or over the object;
- (n) “internal transaction” means a transaction of a type listed in Article 2(2)(a) to (c) where the centre of the main interests of all parties to such transaction is situated, and the relevant object located (as specified in the Protocol), in the same Contracting State at the time of the conclusion of the contract and where the interest created by the transaction has been registered in a national registry in that Contracting State which has made a declaration under Article 50(1);
- (o) “international interest” means an interest held by a creditor to which Article 2 applies;
- (p) “International Registry” means the international registration facilities established for the purposes of this Convention or the Protocol;
- (q) “leasing agreement” means an agreement by which one person (the lessor) grants a right to possession or control of an object (with or without an option to purchase) to another person (the lessee) in return for a rental or other payment;
- (r) “national interest” means an interest held by a creditor in an object and created by an internal transaction covered by a declaration under Article 50(1);
- (s) “non-consensual right or interest” means a right or interest conferred under the law of a Contracting State which has made a declaration under Article 39 to secure the performance of an obligation, including an obligation to a State, State entity or an intergovernmental or private organization;
- (t) “notice of a national interest” means notice registered or to be registered in the International Registry that a national interest has been created;
- (u) “object” means an object of a category to which Article 2 applies;
- (v) “pre-existing right or interest” means a right or interest of any kind in or over an object created or arising before the effective date of this Convention as defined by Article 60(2)(a);
- (w) “proceeds” means money or non-money proceeds of an object arising from the total or partial loss or physical destruction of the object or its total or partial confiscation, condemnation or requisition;
- (x) “prospective assignment” means an assignment that is intended to be made in the future, upon the occurrence of a stated event, whether or not the occurrence of the event is certain;
- (y) “prospective international interest” means an interest that is intended to be created or provided for in an object as an international interest in the future, upon the occurrence of a stated event (which may include the debtor’s acquisition of an interest in the object), whether or not the occurrence of the event is certain;
- (z) “prospective sale” means a sale which is intended to be made in the future, upon the occurrence of a stated event, whether or not the occurrence of the event is certain;

- (aa) “Protocol” means, in respect of any category of object and associated rights to which this Convention applies, the Protocol in respect of that category of object and associated rights;
- (bb) “registered” means registered in the International Registry pursuant to Chapter V;
- (cc) “registered interest” means an international interest, a registrable non-consensual right or interest or a national interest specified in a notice of a national interest registered pursuant to Chapter V;
- (dd) “registrable non-consensual right or interest” means a non-consensual right or interest registrable pursuant to a declaration deposited under Article 40;
- (ee) “Registrar” means, in respect of the Protocol, the person or body designated by that Protocol or appointed under Article 17(2)(b);
- (ff) “regulations” means regulations made or approved by the Supervisory Authority pursuant to the Protocol;
- (gg) “sale” means a transfer of ownership of an object pursuant to a contract of sale;
- (hh) “secured obligation” means an obligation secured by a security interest;
- (ii) “security agreement” means an agreement by which a chargor grants or agrees to grant to a chargee an interest (including an ownership interest) in or over an object to secure the performance of any existing or future obligation of the chargor or a third person;
- (jj) “security interest” means an interest created by a security agreement;
- (kk) “Supervisory Authority” means, in respect of the Protocol, the Supervisory Authority referred to in Article 17(1);
- (ll) “title reservation agreement” means an agreement for the sale of an object on terms that ownership does not pass until fulfilment of the condition or conditions stated in the agreement;
- (mm) “unregistered interest” means a consensual interest or non-consensual right or interest (other than an interest to which Article 39 applies) which has not been registered, whether or not it is registrable under this Convention; and
- (nn) “writing” means a record of information (including information communicated by teletransmission) which is in tangible or other form and is capable of being reproduced in tangible form on a subsequent occasion and which indicates by reasonable means a person’s approval of the record.

Article 2 — The international interest

1. This Convention provides for the constitution and effects of an international interest in certain categories of mobile equipment and associated rights.
2. For the purposes of this Convention, an international interest in mobile equipment is an interest, constituted under Article 7, in a uniquely identifiable object of a category of such objects listed in paragraph 3 and designated in the Protocol:
 - (a) granted by the chargor under a security agreement;
 - (b) vested in a person who is the conditional seller under a title reservation agreement; or
 - (c) vested in a person who is the lessor under a leasing agreement.

An interest falling within sub-paragraph (a) does not also fall within sub-paragraph (b) or (c).
3. The categories referred to in the preceding paragraphs are:
 - (a) airframes, aircraft engines and helicopters;

- (b) railway rolling stock; and
- (c) space assets.

4. The applicable law determines whether an interest to which paragraph 2 applies falls within sub-paragraph (a), (b) or (c) of that paragraph.
5. An international interest in an object extends to proceeds of that object.

Article 3 — Sphere of application

1. This Convention applies when, at the time of the conclusion of the agreement creating or providing for the international interest, the debtor is situated in a Contracting State.
2. The fact that the creditor is situated in a non-Contracting State does not affect the applicability of this Convention.

Article 4 — Where debtor is situated

1. For the purposes of Article 3(1), the debtor is situated in any Contracting State:
 - (a) under the law of which it is incorporated or formed;
 - (b) where it has its registered office or statutory seat;
 - (c) where it has its centre of administration; or
 - (d) where it has its place of business.
2. A reference in sub-paragraph (d) of the preceding paragraph to the debtor's place of business shall, if it has more than one place of business, mean its principal place of business or, if it has no place of business, its habitual residence.

Article 5 — Interpretation and applicable law

1. In the interpretation of this Convention, regard is to be had to its purposes as set forth in the preamble, to its international character and to the need to promote uniformity and predictability in its application.
2. Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the applicable law.
3. References to the applicable law are to the domestic rules of the law applicable by virtue of the rules of private international law of the forum State.
4. Where a State comprises several territorial units, each of which has its own rules of law in respect of the matter to be decided, and where there is no indication of the relevant territorial unit, the law of that State decides which is the territorial unit whose rules shall govern. In the absence of any such rule, the law of the territorial unit with which the case is most closely connected shall apply.

Article 6 — Relationship between the Convention and the Protocol

1. This Convention and the Protocol shall be read and interpreted together as a single instrument.
2. To the extent of any inconsistency between this Convention and the Protocol, the Protocol shall prevail.

CHAPTER II
CONSTITUTION OF AN INTERNATIONAL INTEREST

Article 7 — Formal requirements

An interest is constituted as an international interest under this Convention where the agreement creating or providing for the interest:

- (a) is in writing;
- (b) relates to an object of which the chargor, conditional seller or lessor has power to dispose;
- (c) enables the object to be identified in conformity with the Protocol; and
- (d) in the case of a security agreement, enables the secured obligations to be determined, but without the need to state a sum or maximum sum secured.

CHAPTER III
DEFAULT REMEDIES

Article 8 — Remedies of chargee

1. In the event of default as provided in Article 11, the chargee may, to the extent that the chargor has at any time so agreed and subject to any declaration that may be made by a Contracting State under Article 54, exercise any one or more of the following remedies:
 - (a) take possession or control of any object charged to it;
 - (b) sell or grant a lease of any such object;
 - (c) collect or receive any income or profits arising from the management or use of any such object.
2. The chargee may alternatively apply for a court order authorising or directing any of the acts referred to in the preceding paragraph.
3. Any remedy set out in sub-paragraph (a), (b) or (c) of paragraph 1 or by Article 13 shall be exercised in a commercially reasonable manner. A remedy shall be deemed to be exercised in a commercially reasonable manner where it is exercised in conformity with a provision of the security agreement except where such a provision is manifestly unreasonable.
4. A chargee proposing to sell or grant a lease of an object under paragraph 1 shall give reasonable prior notice in writing of the proposed sale or lease to:
 - (a) interested persons specified in Article 1(m)(i) and (ii); and
 - (b) interested persons specified in Article 1(m)(iii) who have given notice of their rights to the chargee within a reasonable time prior to the sale or lease.
5. Any sum collected or received by the chargee as a result of exercise of any of the remedies set out in paragraph 1 or 2 shall be applied towards discharge of the amount of the secured obligations.
6. Where the sums collected or received by the chargee as a result of the exercise of any remedy set out in paragraph 1 or 2 exceed the amount secured by the security interest and any reasonable costs incurred in the exercise of any such remedy, then unless otherwise ordered by the court the chargee shall distribute the surplus among holders of subsequently ranking interests which have been registered or of which the chargee has been given notice, in order of priority, and pay any remaining balance to the chargor.

Article 9 — Vesting of object in satisfaction; redemption

1. At any time after default as provided in Article 11, the chargee and all the interested persons may agree that ownership of (or any other interest of the chargor in) any object covered by the security interest shall vest in the chargee in or towards satisfaction of the secured obligations.
2. The court may on the application of the chargee order that ownership of (or any other interest of the chargor in) any object covered by the security interest shall vest in the chargee in or towards satisfaction of the secured obligations.
3. The court shall grant an application under the preceding paragraph only if the amount of the secured obligations to be satisfied by such vesting is commensurate with the value of the object after taking account of any payment to be made by the chargee to any of the interested persons.
4. At any time after default as provided in Article 11 and before sale of the charged object or the making of an order under paragraph 2, the chargor or any interested person may discharge the security interest by paying in full the amount secured, subject to any lease granted by the chargee under Article 8(1)(b) or ordered under Article 8(2). Where, after such default, the payment of the amount secured is made in full by an interested person other than the debtor, that person is subrogated to the rights of the chargee.
5. Ownership or any other interest of the chargor passing on a sale under Article 8(1)(b) or passing under paragraph 1 or 2 of this Article is free from any other interest over which the chargee's security interest has priority under the provisions of Article 29.

Article 10 — Remedies of conditional seller or lessor

In the event of default under a title reservation agreement or under a leasing agreement as provided in Article 11, the conditional seller or the lessor, as the case may be, may:

- (a) subject to any declaration that may be made by a Contracting State under Article 54, terminate the agreement and take possession or control of any object to which the agreement relates; or
- (b) apply for a court order authorising or directing either of these acts.

Article 11 — Meaning of default

1. The debtor and the creditor may at any time agree in writing as to the events that constitute a default or otherwise give rise to the rights and remedies specified in Articles 8 to 10 and 13.
2. Where the debtor and the creditor have not so agreed, "default" for the purposes of Articles 8 to 10 and 13 means a default which substantially deprives the creditor of what it is entitled to expect under the agreement.

Article 12 — Additional remedies

Any additional remedies permitted by the applicable law, including any remedies agreed upon by the parties, may be exercised to the extent that they are not inconsistent with the mandatory provisions of this Chapter as set out in Article 15.

Article 13 — Relief pending final determination

1. Subject to any declaration that it may make under Article 55, a Contracting State shall ensure that a creditor who adduces evidence of default by the debtor may, pending final determination of its claim and to the extent that the debtor has at any time so agreed, obtain

from a court speedy relief in the form of such one or more of the following orders as the creditor requests:

- (a) preservation of the object and its value;
 - (b) possession, control or custody of the object;
 - (c) immobilisation of the object; and
 - (d) lease or, except where covered by sub-paragraphs (a) to (c), management of the object and the income therefrom.
2. In making any order under the preceding paragraph, the court may impose such terms as it considers necessary to protect the interested persons in the event that the creditor:
- (a) in implementing any order granting such relief, fails to perform any of its obligations to the debtor under this Convention or the Protocol; or
 - (b) fails to establish its claim, wholly or in part, on the final determination of that claim.
3. Before making any order under paragraph 1, the court may require notice of the request to be given to any of the interested persons.
4. Nothing in this Article affects the application of Article 8(3) or limits the availability of forms of interim relief other than those set out in paragraph 1.

Article 14 — Procedural requirements

Subject to Article 54(2), any remedy provided by this Chapter shall be exercised in conformity with the procedure prescribed by the law of the place where the remedy is to be exercised.

Article 15 — Derogation

In their relations with each other, any two or more of the parties referred to in this Chapter may at any time, by agreement in writing, derogate from or vary the effect of any of the preceding provisions of this Chapter except Articles 8(3) to (6), 9(3) and (4), 13(2) and 14.

CHAPTER IV
THE INTERNATIONAL REGISTRATION SYSTEM

Article 16 — The International Registry

1. An International Registry shall be established for registrations of:
- (a) international interests, prospective international interests and registrable non-consensual rights and interests;
 - (b) assignments and prospective assignments of international interests;
 - (c) acquisitions of international interests by legal or contractual subrogations under the applicable law;
 - (d) notices of national interests; and
 - (e) subordinations of interests referred to in any of the preceding sub-paragraphs.
2. Different international registries may be established for different categories of object and associated rights.
3. For the purposes of this Chapter and Chapter V, the term “registration” includes, where appropriate, an amendment, extension or discharge of a registration.

Article 17 — The Supervisory Authority and the Registrar

1. There shall be a Supervisory Authority as provided by the Protocol.
2. The Supervisory Authority shall:
 - (a) establish or provide for the establishment of the International Registry;
 - (b) except as otherwise provided by the Protocol, appoint and dismiss the Registrar;
 - (c) ensure that any rights required for the continued effective operation of the International Registry in the event of a change of Registrar will vest in or be assignable to the new Registrar;
 - (d) after consultation with the Contracting States, make or approve and ensure the publication of regulations pursuant to the Protocol dealing with the operation of the International Registry;
 - (e) establish administrative procedures through which complaints concerning the operation of the International Registry can be made to the Supervisory Authority;
 - (f) supervise the Registrar and the operation of the International Registry;
 - (g) at the request of the Registrar, provide such guidance to the Registrar as the Supervisory Authority thinks fit;
 - (h) set and periodically review the structure of fees to be charged for the services and facilities of the International Registry;
 - (i) do all things necessary to ensure that an efficient notice-based electronic registration system exists to implement the objectives of this Convention and the Protocol; and
 - (j) report periodically to Contracting States concerning the discharge of its obligations under this Convention and the Protocol.
3. The Supervisory Authority may enter into any agreement requisite for the performance of its functions, including any agreement referred to in Article 27(3).
4. The Supervisory Authority shall own all proprietary rights in the data bases and archives of the International Registry.
5. The Registrar shall ensure the efficient operation of the International Registry and perform the functions assigned to it by this Convention, the Protocol and the regulations.

CHAPTER V
OTHER MATTERS RELATING TO REGISTRATION

Article 18 — Registration requirements

1. The Protocol and regulations shall specify the requirements, including the criteria for the identification of the object:
 - (a) for effecting a registration (which shall include provision for prior electronic transmission of any consent from any person whose consent is required under Article 20);
 - (b) for making searches and issuing search certificates, and, subject thereto;
 - (c) for ensuring the confidentiality of information and documents of the International Registry other than information and documents relating to a registration.
2. The Registrar shall not be under a duty to enquire whether a consent to registration under Article 20 has in fact been given or is valid.

12 international interests in mobile aircraft equipment c. I-17

3. Where an interest registered as a prospective international interest becomes an international interest, no further registration shall be required provided that the registration information is sufficient for a registration of an international interest.

4. The Registrar shall arrange for registrations to be entered into the International Registry data base and made searchable in chronological order of receipt, and the file shall record the date and time of receipt.

5. The Protocol may provide that a Contracting State may designate an entity or entities in its territory as the entry point or entry points through which the information required for registration shall or may be transmitted to the International Registry. A Contracting State making such a designation may specify the requirements, if any, to be satisfied before such information is transmitted to the International Registry.

Article 19 — Validity and time of registration

1. A registration shall be valid only if made in conformity with Article 20.

2. A registration, if valid, shall be complete upon entry of the required information into the International Registry data base so as to be searchable.

3. A registration shall be searchable for the purposes of the preceding paragraph at the time when:

- (a) the International Registry has assigned to it a sequentially ordered file number; and
- (b) the registration information, including the file number, is stored in durable form and may be accessed at the International Registry.

4. If an interest first registered as a prospective international interest becomes an international interest, that international interest shall be treated as registered from the time of registration of the prospective international interest provided that the registration was still current immediately before the international interest was constituted as provided by Article 7.

5. The preceding paragraph applies with necessary modifications to the registration of a prospective assignment of an international interest.

6. A registration shall be searchable in the International Registry data base according to the criteria prescribed by the Protocol.

Article 20 — Consent to registration

1. An international interest, a prospective international interest or an assignment or prospective assignment of an international interest may be registered, and any such registration amended or extended prior to its expiry, by either party with the consent in writing of the other.

2. The subordination of an international interest to another international interest may be registered by or with the consent in writing at any time of the person whose interest has been subordinated.

3. A registration may be discharged by or with the consent in writing of the party in whose favour it was made.

4. The acquisition of an international interest by legal or contractual subrogation may be registered by the subrogee.

5. A registrable non-consensual right or interest may be registered by the holder thereof.

6. A notice of a national interest may be registered by the holder thereof.

Article 21 — Duration of registration

Registration of an international interest remains effective until discharged or until expiry of the period specified in the registration.

Article 22 — Searches

1. Any person may, in the manner prescribed by the Protocol and regulations, make or request a search of the International Registry by electronic means concerning interests or prospective international interests registered therein.
2. Upon receipt of a request therefor, the Registrar, in the manner prescribed by the Protocol and regulations, shall issue a registry search certificate by electronic means with respect to any object:
 - (a) stating all registered information relating thereto, together with a statement indicating the date and time of registration of such information; or
 - (b) stating that there is no information in the International Registry relating thereto.
3. A search certificate issued under the preceding paragraph shall indicate that the creditor named in the registration information has acquired or intends to acquire an international interest in the object but shall not indicate whether what is registered is an international interest or a prospective international interest, even if this is ascertainable from the relevant registration information.

Article 23 — List of declarations and declared non-consensual rights or interests

The Registrar shall maintain a list of declarations, withdrawals of declaration and of the categories of non-consensual right or interest communicated to the Registrar by the Depositary as having been declared by Contracting States in conformity with Articles 39 and 40 and the date of each such declaration or withdrawal of declaration. Such list shall be recorded and searchable in the name of the declaring State and shall be made available as provided in the Protocol and regulations to any person requesting it.

Article 24 — Evidentiary value of certificates

A document in the form prescribed by the regulations which purports to be a certificate issued by the International Registry is prima facie proof:

- (a) that it has been so issued; and
- (b) of the facts recited in it, including the date and time of a registration.

Article 25 — Discharge of registration

1. Where the obligations secured by a registered security interest or the obligations giving rise to a registered non-consensual right or interest have been discharged, or where the conditions of transfer of title under a registered title reservation agreement have been fulfilled, the holder of such interest shall, without undue delay, procure the discharge of the registration after written demand by the debtor delivered to or received at its address stated in the registration.
2. Where a prospective international interest or a prospective assignment of an international interest has been registered, the intending creditor or intending assignee shall, without undue delay, procure the discharge of the registration after written demand by the intending debtor or assignor which is delivered to or received at its address stated in the registration.

before the intending creditor or assignee has given value or incurred a commitment to give value.

3. Where the obligations secured by a national interest specified in a registered notice of a national interest have been discharged, the holder of such interest shall, without undue delay, procure the discharge of the registration after written demand by the debtor delivered to or received at its address stated in the registration.

4. Where a registration ought not to have been made or is incorrect, the person in whose favour the registration was made shall, without undue delay, procure its discharge or amendment after written demand by the debtor delivered to or received at its address stated in the registration.

Article 26 — Access to the international registration facilities

No person shall be denied access to the registration and search facilities of the International Registry on any ground other than its failure to comply with the procedures prescribed by this Chapter.

CHAPTER VI
PRIVILEGES AND IMMUNITIES OF
THE SUPERVISORY AUTHORITY AND THE REGISTRAR

Article 27 — Legal personality; immunity

1. The Supervisory Authority shall have international legal personality where not already possessing such personality.

2. The Supervisory Authority and its officers and employees shall enjoy such immunity from legal or administrative process as is specified in the Protocol.

3. (a) The Supervisory Authority shall enjoy exemption from taxes and such other privileges as may be provided by agreement with the host State.

(b) For the purposes of this paragraph, “host State” means the State in which the Supervisory Authority is situated.

4. The assets, documents, data bases and archives of the International Registry shall be inviolable and immune from seizure or other legal or administrative process.

5. For the purposes of any claim against the Registrar under Article 28(1) or Article 44, the claimant shall be entitled to access to such information and documents as are necessary to enable the claimant to pursue its claim.

6. The Supervisory Authority may waive the inviolability and immunity conferred by paragraph 4.

CHAPTER VII
LIABILITY OF THE REGISTRAR

Article 28 — Liability and financial assurances

1. The Registrar shall be liable for compensatory damages for loss suffered by a person directly resulting from an error or omission of the Registrar and its officers and employees or from a malfunction of the international registration system except where the malfunction is caused by an event of an inevitable and irresistible nature, which could not be prevented by using the best practices in current use in the field of electronic registry design and operation, including those related to back-up and systems security and networking.

2. The Registrar shall not be liable under the preceding paragraph for factual inaccuracy of registration information received by the Registrar or transmitted by the Registrar in the form in which it received that information nor for acts or circumstances for which the Registrar and its officers and employees are not responsible and arising prior to receipt of registration information at the International Registry.
3. Compensation under paragraph 1 may be reduced to the extent that the person who suffered the damage caused or contributed to that damage.
4. The Registrar shall procure insurance or a financial guarantee covering the liability referred to in this Article to the extent determined by the Supervisory Authority, in accordance with the Protocol.

CHAPTER VIII
EFFECTS OF AN INTERNATIONAL INTEREST AS AGAINST THIRD PARTIES

Article 29 — Priority of competing interests

1. A registered interest has priority over any other interest subsequently registered and over an unregistered interest.
2. The priority of the first-mentioned interest under the preceding paragraph applies:
 - (a) even if the first-mentioned interest was acquired or registered with actual knowledge of the other interest; and
 - (b) even as regards value given by the holder of the first-mentioned interest with such knowledge.
3. The buyer of an object acquires its interest in it:
 - (a) subject to an interest registered at the time of its acquisition of that interest; and
 - (b) free from an unregistered interest even if it has actual knowledge of such an interest.
4. The conditional buyer or lessee acquires its interest in or right over that object:
 - (a) subject to an interest registered prior to the registration of the international interest held by its conditional seller or lessor; and
 - (b) free from an interest not so registered at that time even if it has actual knowledge of that interest.
5. The priority of competing interests or rights under this Article may be varied by agreement between the holders of those interests, but an assignee of a subordinated interest is not bound by an agreement to subordinate that interest unless at the time of the assignment a subordination had been registered relating to that agreement.
6. Any priority given by this Article to an interest in an object extends to proceeds.
7. This Convention:
 - (a) does not affect the rights of a person in an item, other than an object, held prior to its installation on an object if under the applicable law those rights continue to exist after the installation; and
 - (b) does not prevent the creation of rights in an item, other than an object, which has previously been installed on an object where under the applicable law those rights are created.

Article 30 — Effects of insolvency

1. In insolvency proceedings against the debtor an international interest is effective if prior to the commencement of the insolvency proceedings that interest was registered in conformity with this Convention.
2. Nothing in this Article impairs the effectiveness of an international interest in the insolvency proceedings where that interest is effective under the applicable law.
3. Nothing in this Article affects:
 - (a) any rules of law applicable in insolvency proceedings relating to the avoidance of a transaction as a preference or a transfer in fraud of creditors; or
 - (b) any rules of procedure relating to the enforcement of rights to property which is under the control or supervision of the insolvency administrator.

CHAPTER IX
ASSIGNMENTS OF ASSOCIATED RIGHTS AND INTERNATIONAL INTERESTS;
RIGHTS OF SUBROGATION

Article 31 — Effects of assignment

1. Except as otherwise agreed by the parties, an assignment of associated rights made in conformity with Article 32 also transfers to the assignee:
 - (a) the related international interest; and
 - (b) all the interests and priorities of the assignor under this Convention.
2. Nothing in this Convention prevents a partial assignment of the assignor's associated rights. In the case of such a partial assignment the assignor and assignee may agree as to their respective rights concerning the related international interest assigned under the preceding paragraph but not so as adversely to affect the debtor without its consent.
3. Subject to paragraph 4, the applicable law shall determine the defences and rights of set-off available to the debtor against the assignee.
4. The debtor may at any time by agreement in writing waive all or any of the defences and rights of set-off referred to in the preceding paragraph other than defences arising from fraudulent acts on the part of the assignee.
5. In the case of an assignment by way of security, the assigned associated rights revert in the assignor, to the extent that they are still subsisting, when the obligations secured by the assignment have been discharged.

Article 32 — Formal requirements of assignment

1. An assignment of associated rights transfers the related international interest only if it:
 - (a) is in writing;
 - (b) enables the associated rights to be identified under the contract from which they arise; and
 - (c) in the case of an assignment by way of security, enables the obligations secured by the assignment to be determined in accordance with the Protocol but without the need to state a sum or maximum sum secured.
2. An assignment of an international interest created or provided for by a security agreement is not valid unless some or all related associated rights also are assigned.

3. This Convention does not apply to an assignment of associated rights which is not effective to transfer the related international interest.

Article 33 — Debtor's duty to assignee

1. To the extent that associated rights and the related international interest have been transferred in accordance with Articles 31 and 32, the debtor in relation to those rights and that interest is bound by the assignment and has a duty to make payment or give other performance to the assignee, if but only if:

- (a) the debtor has been given notice of the assignment in writing by or with the authority of the assignor; and
- (b) the notice identifies the associated rights.

2. Irrespective of any other ground on which payment or performance by the debtor discharges the latter from liability, payment or performance shall be effective for this purpose if made in accordance with the preceding paragraph.

3. Nothing in this Article shall affect the priority of competing assignments.

Article 34 — Default remedies in respect of assignment by way of security

In the event of default by the assignor under the assignment of associated rights and the related international interest made by way of security, Articles 8, 9 and 11 to 14 apply in the relations between the assignor and the assignee (and, in relation to associated rights, apply in so far as those provisions are capable of application to intangible property) as if references:

- (a) to the secured obligation and the security interest were references to the obligation secured by the assignment of the associated rights and the related international interest and the security interest created by that assignment;
- (b) to the chargee or creditor and chargor or debtor were references to the assignee and assignor;
- (c) to the holder of the international interest were references to the assignee; and
- (d) to the object were references to the assigned associated rights and the related international interest.

Article 35 — Priority of competing assignments

1. Where there are competing assignments of associated rights and at least one of the assignments includes the related international interest and is registered, the provisions of Article 29 apply as if the references to a registered interest were references to an assignment of the associated rights and the related registered interest and as if references to a registered or unregistered interest were references to a registered or unregistered assignment.

2. Article 30 applies to an assignment of associated rights as if the references to an international interest were references to an assignment of the associated rights and the related international interest.

Article 36 — Assignee's priority with respect to associated rights

1. The assignee of associated rights and the related international interest whose assignment has been registered only has priority under Article 35(1) over another assignee of the associated rights:

- (a) if the contract under which the associated rights arise states that they are secured by or associated with the object; and
- (b) to the extent that the associated rights are related to an object.

2. For the purposes of sub-paragraph (b) of the preceding paragraph, associated rights are related to an object only to the extent that they consist of rights to payment or performance that relate to:

- (a) a sum advanced and utilised for the purchase of the object;
- (b) a sum advanced and utilised for the purchase of another object in which the assignor held another international interest if the assignor transferred that interest to the assignee and the assignment has been registered;
- (c) the price payable for the object;
- (d) the rentals payable in respect of the object; or
- (e) other obligations arising from a transaction referred to in any of the preceding sub-paragraphs.

3. In all other cases, the priority of the competing assignments of the associated rights shall be determined by the applicable law.

Article 37 — Effects of assignor’s insolvency

The provisions of Article 30 apply to insolvency proceedings against the assignor as if references to the debtor were references to the assignor.

Article 38 — Subrogation

1. Subject to paragraph 2, nothing in this Convention affects the acquisition of associated rights and the related international interest by legal or contractual subrogation under the applicable law.

2. The priority between any interest within the preceding paragraph and a competing interest may be varied by agreement in writing between the holders of the respective interests but an assignee of a subordinated interest is not bound by an agreement to subordinate that interest unless at the time of the assignment a subordination had been registered relating to that agreement.

CHAPTER X
RIGHTS OR INTERESTS SUBJECT TO DECLARATIONS
BY CONTRACTING STATES

Article 39 — Rights having priority without registration

1. A Contracting State may at any time, in a declaration deposited with the Depositary of the Protocol declare, generally or specifically:

- (a) those categories of non-consensual right or interest (other than a right or interest to which Article 40 applies) which under that State’s law have priority over an interest in an object equivalent to that of the holder of a registered international interest and which shall have priority over a registered international interest, whether in or outside insolvency proceedings; and
- (b) that nothing in this Convention shall affect the right of a State or State entity, intergovernmental organization or other private provider of public services to arrest or detain an object under the laws of that State for payment of amounts owed to such entity, organization or provider directly relating to those services in respect of that object or another object.

2. A declaration made under the preceding paragraph may be expressed to cover categories that are created after the deposit of that declaration.

3. A non-consensual right or interest has priority over an international interest if and only if the former is of a category covered by a declaration deposited prior to the registration of the international interest.

4. Notwithstanding the preceding paragraph, a Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare that a right or interest of a category covered by a declaration made under sub-paragraph (a) of paragraph 1 shall have priority over an international interest registered prior to the date of such ratification, acceptance, approval or accession.

Article 40 — Registrable non-consensual rights or interests

A Contracting State may at any time in a declaration deposited with the Depository of the Protocol list the categories of non-consensual right or interest which shall be registrable under this Convention as regards any category of object as if the right or interest were an international interest and shall be regulated accordingly. Such a declaration may be modified from time to time.

CHAPTER XI
APPLICATION OF THE CONVENTION TO SALES

Article 41 — Sale and prospective sale

This Convention shall apply to the sale or prospective sale of an object as provided for in the Protocol with any modifications therein.

CHAPTER XII
JURISDICTION

Article 42 — Choice of forum

1. Subject to Articles 43 and 44, the courts of a Contracting State chosen by the parties to a transaction have jurisdiction in respect of any claim brought under this Convention, whether or not the chosen forum has a connection with the parties or the transaction. Such jurisdiction shall be exclusive unless otherwise agreed between the parties.

2. Any such agreement shall be in writing or otherwise concluded in accordance with the formal requirements of the law of the chosen forum.

Article 43 — Jurisdiction under Article 13

1. The courts of a Contracting State chosen by the parties and the courts of the Contracting State on the territory of which the object is situated have jurisdiction to grant relief under Article 13(1)(a), (b), (c) and Article 13(4) in respect of that object.

2. Jurisdiction to grant relief under Article 13(1)(d) or other interim relief by virtue of Article 13(4) may be exercised either:

- (a) by the courts chosen by the parties; or
- (b) by the courts of a Contracting State on the territory of which the debtor is situated, being relief which, by the terms of the order granting it, is enforceable only in the territory of that Contracting State.

3. A court has jurisdiction under the preceding paragraphs even if the final determination of the claim referred to in Article 13(1) will or may take place in a court of another Contracting State or by arbitration.

Article 44 — Jurisdiction to make orders against the Registrar

1. The courts of the place in which the Registrar has its centre of administration shall have exclusive jurisdiction to award damages or make orders against the Registrar.
2. Where a person fails to respond to a demand made under Article 25 and that person has ceased to exist or cannot be found for the purpose of enabling an order to be made against it requiring it to procure discharge of the registration, the courts referred to in the preceding paragraph shall have exclusive jurisdiction, on the application of the debtor or intending debtor, to make an order directed to the Registrar requiring the Registrar to discharge the registration.
3. Where a person fails to comply with an order of a court having jurisdiction under this Convention or, in the case of a national interest, an order of a court of competent jurisdiction requiring that person to procure the amendment or discharge of a registration, the courts referred to in paragraph 1 may direct the Registrar to take such steps as will give effect to that order.
4. Except as otherwise provided by the preceding paragraphs, no court may make orders or give judgments or rulings against or purporting to bind the Registrar.

Article 45 — Jurisdiction in respect of insolvency proceedings

The provisions of this Chapter are not applicable to insolvency proceedings.

CHAPTER XIII
RELATIONSHIP WITH OTHER CONVENTIONS

Article 45 *bis* — Relationship with the United Nations Convention on
the Assignment of Receivables in International Trade

This Convention shall prevail over the *United Nations Convention on the Assignment of Receivables in International Trade*, opened for signature in New York on 12 December 2001, as it relates to the assignment of receivables which are associated rights related to international interests in aircraft objects, railway rolling stock and space assets.

Article 46 — Relationship with the Unidroit Convention
on International Financial Leasing

The Protocol may determine the relationship between this Convention and the *Unidroit Convention on International Financial Leasing*, signed at Ottawa on 28 May 1988.

CHAPTER XIV
FINAL PROVISIONS

Article 47 — Signature, ratification, acceptance, approval or accession

1. This Convention shall be open for signature in Cape Town on 16 November 2001 by States participating in the Diplomatic Conference to Adopt a Mobile Equipment Convention and an Aircraft Protocol held at Cape Town from 29 October to 16 November 2001. After 16 November 2001, the Convention shall be open to all States for signature at the Headquarters of the International Institute for the Unification of Private Law (Unidroit) in Rome until it enters into force in accordance with Article 49.
2. This Convention shall be subject to ratification, acceptance or approval by States which have signed it.
3. Any State which does not sign this Convention may accede to it at any time.

4. Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the Depositary.

Article 48 — Regional Economic Integration Organizations

1. A Regional Economic Integration Organization which is constituted by sovereign States and has competence over certain matters governed by this Convention may similarly sign, accept, approve or accede to this Convention. The Regional Economic Integration Organization shall in that case have the rights and obligations of a Contracting State, to the extent that that Organization has competence over matters governed by this Convention. Where the number of Contracting States is relevant in this Convention, the Regional Economic Integration Organization shall not count as a Contracting State in addition to its Member States which are Contracting States.

2. The Regional Economic Integration Organization shall, at the time of signature, acceptance, approval or accession, make a declaration to the Depositary specifying the matters governed by this Convention in respect of which competence has been transferred to that Organization by its Member States. The Regional Economic Integration Organization shall promptly notify the Depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.

3. Any reference to a “Contracting State” or “Contracting States” or “State Party” or “States Parties” in this Convention applies equally to a Regional Economic Integration Organization where the context so requires.

Article 49 — Entry into force

1. This Convention enters into force on the first day of the month following the expiration of three months after the date of the deposit of the third instrument of ratification, acceptance, approval or accession but only as regards a category of objects to which a Protocol applies:

- (a) as from the time of entry into force of that Protocol;
- (b) subject to the terms of that Protocol; and
- (c) as between States Parties to this Convention and that Protocol.

2. For other States this Convention enters into force on the first day of the month following the expiration of three months after the date of the deposit of their instrument of ratification, acceptance, approval or accession but only as regards a category of objects to which a Protocol applies and subject, in relation to such Protocol, to the requirements of subparagraphs (a), (b) and (c) of the preceding paragraph.

Article 50 — Internal transactions

1. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare that this Convention shall not apply to a transaction which is an internal transaction in relation to that State with regard to all types of objects or some of them.

2. Notwithstanding the preceding paragraph, the provisions of Articles 8(4), 9(1), 16, Chapter V, Article 29, and any provisions of this Convention relating to registered interests shall apply to an internal transaction.

3. Where notice of a national interest has been registered in the International Registry, the priority of the holder of that interest under Article 29 shall not be affected by the fact that such interest has become vested in another person by assignment or subrogation under the applicable law.

Article 51 — Future Protocols

1. The Depositary may create working groups, in co-operation with such relevant non-governmental organizations as the Depositary considers appropriate, to assess the feasibility of extending the application of this Convention, through one or more Protocols, to objects of any category of high-value mobile equipment, other than a category referred to in Article 2(3), each member of which is uniquely identifiable, and associated rights relating to such objects.
2. The Depositary shall communicate the text of any preliminary draft Protocol relating to a category of objects prepared by such a working group to all States Parties to this Convention, all member States of the Depositary, member States of the United Nations which are not members of the Depositary and the relevant intergovernmental organizations, and shall invite such States and organizations to participate in intergovernmental negotiations for the completion of a draft Protocol on the basis of such a preliminary draft Protocol.
3. The Depositary shall also communicate the text of any preliminary draft Protocol prepared by such a working group to such relevant non-governmental organizations as the Depositary considers appropriate. Such non-governmental organizations shall be invited promptly to submit comments on the text of the preliminary draft Protocol to the Depositary and to participate as observers in the preparation of a draft Protocol.
4. When the competent bodies of the Depositary adjudge such a draft Protocol ripe for adoption, the Depositary shall convene a diplomatic conference for its adoption.
5. Once such a Protocol has been adopted, subject to paragraph 6, this Convention shall apply to the category of objects covered thereby.
6. Article 45 *bis* of this Convention applies to such a Protocol only if specifically provided for in that Protocol.

Article 52 — Territorial units

1. If a Contracting State has territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them and may modify its declaration by submitting another declaration at any time.
2. Any such declaration shall state expressly the territorial units to which this Convention applies.
3. If a Contracting State has not made any declaration under paragraph 1, this Convention shall apply to all territorial units of that State.
4. Where a Contracting State extends this Convention to one or more of its territorial units, declarations permitted under this Convention may be made in respect of each such territorial unit, and the declarations made in respect of one territorial unit may be different from those made in respect of another territorial unit.
5. If by virtue of a declaration under paragraph 1, this Convention extends to one or more territorial units of a Contracting State:
 - (a) the debtor is considered to be situated in a Contracting State only if it is incorporated or formed under a law in force in a territorial unit to which this Convention applies or if it has its registered office or statutory seat, centre of administration, place of business or habitual residence in a territorial unit to which this Convention applies;

- (b) any reference to the location of the object in a Contracting State refers to the location of the object in a territorial unit to which this Convention applies; and
- (c) any reference to the administrative authorities in that Contracting State shall be construed as referring to the administrative authorities having jurisdiction in a territorial unit to which this Convention applies.

Article 53 — Determination of courts

A Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare the relevant “court” or “courts” for the purposes of Article 1 and Chapter XII of this Convention.

Article 54 — Declarations regarding remedies

1. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare that while the charged object is situated within, or controlled from its territory the chargee shall not grant a lease of the object in that territory.
2. A Contracting State shall, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare whether or not any remedy available to the creditor under any provision of this Convention which is not there expressed to require application to the court may be exercised only with leave of the court.

Article 55 — Declarations regarding relief pending final determination

A Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare that it will not apply the provisions of Article 13 or Article 43, or both, wholly or in part. The declaration shall specify under which conditions the relevant Article will be applied, in case it will be applied partly, or otherwise which other forms of interim relief will be applied.

Article 56 — Reservations and declarations

1. No reservations may be made to this Convention but declarations authorised by Articles 39, 40, 50, 52, 53, 54, 55, 57, 58 and 60 may be made in accordance with these provisions.
2. Any declaration or subsequent declaration or any withdrawal of a declaration made under this Convention shall be notified in writing to the Depositary.

Article 57 — Subsequent declarations

1. A State Party may make a subsequent declaration, other than a declaration authorised under Article 60, at any time after the date on which this Convention has entered into force for it, by notifying the Depositary to that effect.
2. Any such subsequent declaration shall take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary. Where a longer period for that declaration to take effect is specified in the notification, it shall take effect upon the expiration of such longer period after receipt of the notification by the Depositary.
3. Notwithstanding the previous paragraphs, this Convention shall continue to apply, as if no such subsequent declarations had been made, in respect of all rights and interests arising prior to the effective date of any such subsequent declaration.

Article 58 — Withdrawal of declarations

1. Any State Party having made a declaration under this Convention, other than a declaration authorised under Article 60, may withdraw it at any time by notifying the Depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary.
2. Notwithstanding the previous paragraph, this Convention shall continue to apply, as if no such withdrawal of declaration had been made, in respect of all rights and interests arising prior to the effective date of any such withdrawal.

Article 59 — Denunciations

1. Any State Party may denounce this Convention by notification in writing to the Depositary.
2. Any such denunciation shall take effect on the first day of the month following the expiration of twelve months after the date on which notification is received by the Depositary.
3. Notwithstanding the previous paragraphs, this Convention shall continue to apply, as if no such denunciation had been made, in respect of all rights and interests arising prior to the effective date of any such denunciation.

Article 60 — Transitional provisions

1. Unless otherwise declared by a Contracting State at any time, the Convention does not apply to a pre-existing right or interest, which retains the priority it enjoyed under the applicable law before the effective date of this Convention.
2. For the purposes of Article 1(v) and of determining priority under this Convention:
 - (a) “effective date of this Convention” means in relation to a debtor the time when this Convention enters into force or the time when the State in which the debtor is situated becomes a Contracting State, whichever is the later; and
 - (b) the debtor is situated in a State where it has its centre of administration or, if it has no centre of administration, its place of business or, if it has more than one place of business, its principal place of business or, if it has no place of business, its habitual residence.
3. A Contracting State may in its declaration under paragraph 1 specify a date, not earlier than three years after the date on which the declaration becomes effective, when this Convention and the Protocol will become applicable, for the purpose of determining priority, including the protection of any existing priority, to pre-existing rights or interests arising under an agreement made at a time when the debtor was situated in a State referred to in subparagraph (b) of the preceding paragraph but only to the extent and in the manner specified in its declaration.

Article 61 — Review Conferences, amendments and related matters

1. The Depositary shall prepare reports yearly or at such other time as the circumstances may require for the States Parties as to the manner in which the international regimen established in this Convention has operated in practice. In preparing such reports, the Depositary shall take into account the reports of the Supervisory Authority concerning the functioning of the international registration system.

2. At the request of not less than twenty-five per cent of the States Parties, Review Conferences of States Parties shall be convened from time to time by the Depositary, in consultation with the Supervisory Authority, to consider:
 - (a) the practical operation of this Convention and its effectiveness in facilitating the asset-based financing and leasing of the objects covered by its terms;
 - (b) the judicial interpretation given to, and the application made of the terms of this Convention and the regulations;
 - (c) the functioning of the international registration system, the performance of the Registrar and its oversight by the Supervisory Authority, taking into account the reports of the Supervisory Authority; and
 - (d) whether any modifications to this Convention or the arrangements relating to the International Registry are desirable.
3. Subject to paragraph 4, any amendment to this Convention shall be approved by at least a two-thirds majority of States Parties participating in the Conference referred to in the preceding paragraph and shall then enter into force in respect of States which have ratified, accepted or approved such amendment when ratified, accepted, or approved by three States in accordance with the provisions of Article 49 relating to its entry into force.
4. Where the proposed amendment to this Convention is intended to apply to more than one category of equipment, such amendment shall also be approved by at least a two-thirds majority of States Parties to each Protocol that are participating in the Conference referred to in paragraph 2.

Article 62 — Depositary and its functions

1. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Institute for the Unification of Private Law (Unidroit), which is hereby designated the Depositary.
2. The Depositary shall:
 - (a) inform all Contracting States of:
 - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof,
 - (ii) the date of entry into force of this Convention,
 - (iii) each declaration made in accordance with this Convention, together with the date thereof,
 - (iv) the withdrawal or amendment of any declaration, together with the date thereof, and
 - (v) the notification of any denunciation of this Convention together with the date thereof and the date on which it takes effect;
 - (b) transmit certified true copies of this Convention to all Contracting States;
 - (c) provide the Supervisory Authority and the Registrar with a copy of each instrument of ratification, acceptance, approval or accession, together with the date of deposit thereof, of each declaration or withdrawal or amendment of a declaration and of each notification of denunciation, together with the date of notification thereof, so that the information contained therein is easily and fully available; and
 - (d) perform such other functions customary for depositaries.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorised, have signed this Convention.

DONE at Cape Town, this sixteenth day of November, two thousand and one, in a single original in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic, such authenticity to take effect upon verification by the Joint Secretariat of the Conference under the authority of the President of the Conference within ninety days hereof as to the conformity of the texts with one another. 2004, c. 5, Sch. A.

SCHEDULE B

PROTOCOL TO THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON MATTERS SPECIFIC TO AIRCRAFT EQUIPMENT

THE STATES PARTIES TO THIS PROTOCOL,

CONSIDERING it necessary to implement the *Convention on International Interests in Mobile Equipment* (hereinafter referred to as “the Convention”) as it relates to aircraft equipment, in the light of the purposes set out in the preamble to the Convention,

MINDFUL of the need to adapt the Convention to meet the particular requirements of aircraft finance and to extend the sphere of application of the Convention to include contracts of sale of aircraft equipment,

MINDFUL of the principles and objectives of the *Convention on International Civil Aviation*, signed at Chicago on 7 December 1944,

HAVE AGREED upon the following provisions relating to aircraft equipment:

CHAPTER I SPHERE OF APPLICATION AND GENERAL PROVISIONS

Article I — Defined terms

1. In this Protocol, except where the context otherwise requires, terms used in it have the meanings set out in the Convention.
2. In this Protocol the following terms are employed with the meanings set out below:
 - (a) “aircraft” means aircraft as defined for the purposes of the Chicago Convention which are either airframes with aircraft engines installed thereon or helicopters;
 - (b) “aircraft engines” means aircraft engines (other than those used in military, customs or police services) powered by jet propulsion or turbine or piston technology and:
 - (i) in the case of jet propulsion aircraft engines, have at least 1750 lb of thrust or its equivalent, and
 - (ii) in the case of turbine-powered or piston-powered aircraft engines, have at least 550 rated take-off shaft horsepower or its equivalent,
 together with all modules and other installed, incorporated or attached accessories, parts and equipment and all data, manuals and records relating thereto;
 - (c) “aircraft objects” means airframes, aircraft engines and helicopters;
 - (d) “aircraft register” means a register maintained by a State or a common mark registering authority for the purposes of the Chicago Convention;
 - (e) “airframes” means airframes (other than those used in military, customs or police services) that, when appropriate aircraft engines are installed thereon, are type certified by the competent aviation authority to transport:
 - (i) at least eight (8) persons including crew, or
 - (ii) goods in excess of 2750 kilograms,

together with all installed, incorporated or attached accessories, parts and equipment (other than aircraft engines), and all data, manuals and records relating thereto;

- (f) “authorised party” means the party referred to in Article XIII(3);
- (g) “Chicago Convention” means the *Convention on International Civil Aviation*, signed at Chicago on 7 December 1944, as amended, and its Annexes;
- (h) “common mark registering authority” means the authority maintaining a register in accordance with Article 77 of the Chicago Convention as implemented by the Resolution adopted on 14 December 1967 by the Council of the International Civil Aviation Organization on nationality and registration of aircraft operated by international operating agencies;
- (i) “de-registration of the aircraft” means deletion or removal of the registration of the aircraft from its aircraft register in accordance with the Chicago Convention;
- (j) “guarantee contract” means a contract entered into by a person as guarantor;
- (k) “guarantor” means a person who, for the purpose of assuring performance of any obligations in favour of a creditor secured by a security agreement or under an agreement, gives or issues a suretyship or demand guarantee or a standby letter of credit or any other form of credit insurance;
- (l) “helicopters” means heavier-than-air machines (other than those used in military, customs or police services) supported in flight chiefly by the reactions of the air on one or more power-driven rotors on substantially vertical axes and which are type certified by the competent aviation authority to transport:
 - (i) at least five (5) persons including crew, or
 - (ii) goods in excess of 450 kilograms,
 together with all installed, incorporated or attached accessories, parts and equipment (including rotors), and all data, manuals and records relating thereto;
- (m) “insolvency-related event” means:
 - (i) the commencement of the insolvency proceedings, or
 - (ii) the declared intention to suspend or actual suspension of payments by the debtor where the creditor’s right to institute insolvency proceedings against the debtor or to exercise remedies under the Convention is prevented or suspended by law or State action;
- (n) “primary insolvency jurisdiction” means the Contracting State in which the centre of the debtor’s main interests is situated, which for this purpose shall be deemed to be the place of the debtor’s statutory seat or, if there is none, the place where the debtor is incorporated or formed, unless proved otherwise;
- (o) “registry authority” means the national authority or the common mark registering authority, maintaining an aircraft register in a Contracting State and responsible for the registration and de-registration of an aircraft in accordance with the Chicago Convention; and
- (p) “State of registry” means, in respect of an aircraft, the State on the national register of which an aircraft is entered or the State of location of the common mark registering authority maintaining the aircraft register.

Article II — Application of Convention as regards aircraft objects

1. The Convention shall apply in relation to aircraft objects as provided by the terms of this Protocol.
2. The Convention and this Protocol shall be known as the Convention on International Interests in Mobile Equipment as applied to aircraft objects.

Article III — Application of Convention to sales

The following provisions of the Convention apply as if references to an agreement creating or providing for an international interest were references to a contract of sale and as if references to an international interest, a prospective international interest, the debtor and the creditor were references to a sale, a prospective sale, the seller and the buyer respectively:

- Articles 3 and 4;
- Article 16(1)(a);
- Article 19(4);
- Article 20(1) (as regards registration of a contract of sale or a prospective sale);
- Article 25(2) (as regards a prospective sale); and
- Article 30.

In addition, the general provisions of Article 1, Article 5, Chapters IV to VII, Article 29 (other than Article 29(3) which is replaced by Article XIV(1) and (2)), Chapter X, Chapter XII (other than Article 43), Chapter XIII and Chapter XIV (other than Article 60) shall apply to contracts of sale and prospective sales.

Article IV — Sphere of application

1. Without prejudice to Article 3(1) of the Convention, the Convention shall also apply in relation to a helicopter, or to an airframe pertaining to an aircraft, registered in an aircraft register of a Contracting State which is the State of registry, and where such registration is made pursuant to an agreement for registration of the aircraft it is deemed to have been effected at the time of the agreement.
2. For the purposes of the definition of “internal transaction” in Article 1 of the Convention:
 - (a) an airframe is located in the State of registry of the aircraft of which it is a part;
 - (b) an aircraft engine is located in the State of registry of the aircraft on which it is installed or, if it is not installed on an aircraft, where it is physically located; and
 - (c) a helicopter is located in its State of registry, at the time of the conclusion of the agreement creating or providing for the interest.
3. The parties may, by agreement in writing, exclude the application of Article XI and, in their relations with each other, derogate from or vary the effect of any of the provisions of this Protocol except Article IX(2) - (4).

Article V — Formalities, effects and registration of contracts of sale

1. For the purposes of this Protocol, a contract of sale is one which:
 - (a) is in writing;
 - (b) relates to an aircraft object of which the seller has power to dispose; and
 - (c) enables the aircraft object to be identified in conformity with this Protocol.
2. A contract of sale transfers the interest of the seller in the aircraft object to the buyer according to its terms.
3. Registration of a contract of sale remains effective indefinitely. Registration of a prospective sale remains effective unless discharged or until expiry of the period, if any, specified in the registration.

Article VI — Representative capacities

A person may enter into an agreement or a sale, and register an international interest in, or a sale of, an aircraft object, in an agency, trust or other representative capacity. In such case, that person is entitled to assert rights and interests under the Convention.

Article VII — Description of aircraft objects

A description of an aircraft object that contains its manufacturer's serial number, the name of the manufacturer and its model designation is necessary and sufficient to identify the object for the purposes of Article 7(c) of the Convention and Article V(1)(c) of this Protocol.

Article VIII — Choice of law

1. This Article applies only where a Contracting State has made a declaration pursuant to Article XXX(1).
2. The parties to an agreement, or a contract of sale, or a related guarantee contract or subordination agreement may agree on the law which is to govern their contractual rights and obligations, wholly or in part.
3. Unless otherwise agreed, the reference in the preceding paragraph to the law chosen by the parties is to the domestic rules of law of the designated State or, where that State comprises several territorial units, to the domestic law of the designated territorial unit.

CHAPTER II
DEFAULT REMEDIES, PRIORITIES AND ASSIGNMENTS

Article IX — Modification of default remedies provisions

1. In addition to the remedies specified in Chapter III of the Convention, the creditor may, to the extent that the debtor has at any time so agreed and in the circumstances specified in that Chapter:
 - (a) procure the de-registration of the aircraft; and
 - (b) procure the export and physical transfer of the aircraft object from the territory in which it is situated.
2. The creditor shall not exercise the remedies specified in the preceding paragraph without the prior consent in writing of the holder of any registered interest ranking in priority to that of the creditor.
3. Article 8(3) of the Convention shall not apply to aircraft objects. Any remedy given by the Convention in relation to an aircraft object shall be exercised in a commercially reasonable manner. A remedy shall be deemed to be exercised in a commercially reasonable manner where it is exercised in conformity with a provision of the agreement except where such a provision is manifestly unreasonable.
4. A chargee giving ten or more working days' prior written notice of a proposed sale or lease to interested persons shall be deemed to satisfy the requirement of providing "reasonable prior notice" specified in Article 8(4) of the Convention. The foregoing shall not prevent a chargee and a chargor or a guarantor from agreeing to a longer period of prior notice.
5. The registry authority in a Contracting State shall, subject to any applicable safety laws and regulations, honour a request for de-registration and export if:
 - (a) the request is properly submitted by the authorised party under a recorded irrevocable de-registration and export request authorization; and

(b) the authorised party certifies to the registry authority, if required by that authority, that all registered interests ranking in priority to that of the creditor in whose favour the authorization has been issued have been discharged or that the holders of such interests have consented to the de-registration and export.

6. A chargee proposing to procure the de-registration and export of an aircraft under paragraph 1 otherwise than pursuant to a court order shall give reasonable prior notice in writing of the proposed de-registration and export to:

- (a) interested persons specified in Article 1(m)(i) and (ii) of the Convention; and
- (b) interested persons specified in Article 1(m)(iii) of the Convention who have given notice of their rights to the chargee within a reasonable time prior to the de-registration and export.

Article X — Modification of provisions regarding relief pending final determination

1. This Article applies only where a Contracting State has made a declaration under Article XXX(2) and to the extent stated in such declaration.

2. For the purposes of Article 13(1) of the Convention, “speedy” in the context of obtaining relief means within such number of working days from the date of filing of the application for relief as is specified in a declaration made by the Contracting State in which the application is made.

3. Article 13(1) of the Convention applies with the following being added immediately after sub-paragraph (d):

(e) if at any time the debtor and the creditor specifically agree, sale and application of proceeds therefrom, and Article 43(2) applies with the insertion after the words “Article 13(1)(d)” of the words “and (e)”.

4. Ownership or any other interest of the debtor passing on a sale under the preceding paragraph is free from any other interest over which the creditor’s international interest has priority under the provisions of Article 29 of the Convention.

5. The creditor and the debtor or any other interested person may agree in writing to exclude the application of Article 13(2) of the Convention.

6. With regard to the remedies in Article IX(1):

(a) they shall be made available by the registry authority and other administrative authorities, as applicable, in a Contracting State no later than five working days after the creditor notifies such authorities that the relief specified in Article IX(1) is granted or, in the case of relief granted by a foreign court, recognised by a court of that Contracting State, and that the creditor is entitled to procure those remedies in accordance with the Convention; and

(b) the applicable authorities shall expeditiously co-operate with and assist the creditor in the exercise of such remedies in conformity with the applicable aviation safety laws and regulations.

7. Paragraphs 2 and 6 shall not affect any applicable aviation safety laws and regulations.

Article XI — Remedies on insolvency

1. This Article applies only where a Contracting State that is the primary insolvency jurisdiction has made a declaration pursuant to Article XXX(3).

Alternative A

2. Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, shall, subject to paragraph 7, give possession of the aircraft object to the creditor no later than the earlier of:
 - (a) the end of the waiting period; and
 - (b) the date on which the creditor would be entitled to possession of the aircraft object if this Article did not apply.
3. For the purposes of this Article, the “waiting period” shall be the period specified in a declaration of the Contracting State which is the primary insolvency jurisdiction.
4. References in this Article to the “insolvency administrator” shall be to that person in its official, not in its personal, capacity.
5. Unless and until the creditor is given the opportunity to take possession under paragraph 2:
 - (a) the insolvency administrator or the debtor, as applicable, shall preserve the aircraft object and maintain it and its value in accordance with the agreement; and
 - (b) the creditor shall be entitled to apply for any other forms of interim relief available under the applicable law.
6. Sub-paragraph (a) of the preceding paragraph shall not preclude the use of the aircraft object under arrangements designed to preserve the aircraft object and maintain it and its value.
7. The insolvency administrator or the debtor, as applicable, may retain possession of the aircraft object where, by the time specified in paragraph 2, it has cured all defaults other than a default constituted by the opening of insolvency proceedings and has agreed to perform all future obligations under the agreement. A second waiting period shall not apply in respect of a default in the performance of such future obligations.
8. With regard to the remedies in Article IX(1):
 - (a) they shall be made available by the registry authority and the administrative authorities in a Contracting State, as applicable, no later than five working days after the date on which the creditor notifies such authorities that it is entitled to procure those remedies in accordance with the Convention; and
 - (b) the applicable authorities shall expeditiously co-operate with and assist the creditor in the exercise of such remedies in conformity with the applicable aviation safety laws and regulations.
9. No exercise of remedies permitted by the Convention or this Protocol may be prevented or delayed after the date specified in paragraph 2.
10. No obligations of the debtor under the agreement may be modified without the consent of the creditor.
11. Nothing in the preceding paragraph shall be construed to affect the authority, if any, of the insolvency administrator under the applicable law to terminate the agreement.
12. No rights or interests, except for non-consensual rights or interests of a category covered by a declaration pursuant to Article 39(1), shall have priority in insolvency proceedings over registered interests.
13. The Convention as modified by Article IX of this Protocol shall apply to the exercise of any remedies under this Article.

Alternative B

2. Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, upon the request of the creditor, shall give notice to the creditor within the time specified in a declaration of a Contracting State pursuant to Article XXX(3) whether it will:
 - (a) cure all defaults other than a default constituted by the opening of insolvency proceedings and agree to perform all future obligations, under the agreement and related transaction documents; or
 - (b) give the creditor the opportunity to take possession of the aircraft object, in accordance with the applicable law.
3. The applicable law referred to in sub-paragraph (b) of the preceding paragraph may permit the court to require the taking of any additional step or the provision of any additional guarantee.
4. The creditor shall provide evidence of its claims and proof that its international interest has been registered.
5. If the insolvency administrator or the debtor, as applicable, does not give notice in conformity with paragraph 2, or when the insolvency administrator or the debtor has declared that it will give the creditor the opportunity to take possession of the aircraft object but fails to do so, the court may permit the creditor to take possession of the aircraft object upon such terms as the court may order and may require the taking of any additional step or the provision of any additional guarantee.
6. The aircraft object shall not be sold pending a decision by a court regarding the claim and the international interest.

Article XII — Insolvency assistance

1. This Article applies only where a Contracting State has made a declaration pursuant to Article XXX(1).
2. The courts of a Contracting State in which an aircraft object is situated shall, in accordance with the law of the Contracting State, co-operate to the maximum extent possible with foreign courts and foreign insolvency administrators in carrying out the provisions of Article XI.

Article XIII — De-registration and export request authorization

1. This Article applies only where a Contracting State has made a declaration pursuant to Article XXX(1).
2. Where the debtor has issued an irrevocable de-registration and export request authorization substantially in the form annexed to this Protocol and has submitted such authorization for recordation to the registry authority, that authorization shall be so recorded.
3. The person in whose favour the authorization has been issued (the “authorised party”) or its certified designee shall be the sole person entitled to exercise the remedies specified in Article IX(1) and may do so only in accordance with the authorization and applicable aviation safety laws and regulations. Such authorization may not be revoked by the debtor without the consent in writing of the authorised party. The registry authority shall remove an authorization from the registry at the request of the authorised party.
4. The registry authority and other administrative authorities in Contracting States shall expeditiously co-operate with and assist the authorised party in the exercise of the remedies specified in Article IX.

Article XIV — Modification of priority provisions

1. A buyer of an aircraft object under a registered sale acquires its interest in that object free from an interest subsequently registered and from an unregistered interest, even if the buyer has actual knowledge of the unregistered interest.
2. A buyer of an aircraft object acquires its interest in that object subject to an interest registered at the time of its acquisition.
3. Ownership of or another right or interest in an aircraft engine shall not be affected by its installation on or removal from an aircraft.
4. Article 29(7) of the Convention applies to an item, other than an object, installed on an airframe, aircraft engine or helicopter.

Article XV — Modification of assignment provisions

Article 33(1) of the Convention applies as if the following were added immediately after subparagraph (b):

“and (c) the debtor has consented in writing, whether or not the consent is given in advance of the assignment or identifies the assignee.”

Article XVI — Debtor provisions

1. In the absence of a default within the meaning of Article 11 of the Convention, the debtor shall be entitled to the quiet possession and use of the object in accordance with the agreement as against:
 - (a) its creditor and the holder of any interest from which the debtor takes free pursuant to Article 29(4) of the Convention or, in the capacity of buyer, Article XIV(1) of this Protocol, unless and to the extent that the debtor has otherwise agreed; and
 - (b) the holder of any interest to which the debtor’s right or interest is subject pursuant to Article 29(4) of the Convention or, in the capacity of buyer, Article XIV(2) of this Protocol, but only to the extent, if any, that such holder has agreed.
2. Nothing in the Convention or this Protocol affects the liability of a creditor for any breach of the agreement under the applicable law in so far as that agreement relates to an aircraft object.

CHAPTER III
REGISTRY PROVISIONS RELATING TO
INTERNATIONAL INTERESTS IN AIRCRAFT OBJECTS

Article XVII — The Supervisory Authority and the Registrar

1. The Supervisory Authority shall be the international entity designated by a Resolution adopted by the Diplomatic Conference to Adopt a Mobile Equipment Convention and an Aircraft Protocol.
2. Where the international entity referred to in the preceding paragraph is not able and willing to act as Supervisory Authority, a Conference of Signatory and Contracting States shall be convened to designate another Supervisory Authority.
3. The Supervisory Authority and its officers and employees shall enjoy such immunity from legal and administrative process as is provided under the rules applicable to them as an international entity or otherwise.

4. The Supervisory Authority may establish a commission of experts, from among persons nominated by Signatory and Contracting States and having the necessary qualifications and experience, and entrust it with the task of assisting the Supervisory Authority in the discharge of its functions.

5. The first Registrar shall operate the International Registry for a period of five years from the date of entry into force of this Protocol. Thereafter, the Registrar shall be appointed or reappointed at regular five-yearly intervals by the Supervisory Authority.

Article XVIII — First regulations

The first regulations shall be made by the Supervisory Authority so as to take effect upon the entry into force of this Protocol.

Article XIX — Designated entry points

1. Subject to paragraph 2, a Contracting State may at any time designate an entity or entities in its territory as the entry point or entry points through which there shall or may be transmitted to the International Registry information required for registration other than registration of a notice of a national interest or a right or interest under Article 40 in either case arising under the laws of another State.

2. A designation made under the preceding paragraph may permit, but not compel, use of a designated entry point or entry points for information required for registrations in respect of aircraft engines.

Article XX — Additional modifications to Registry provisions

1. For the purposes of Article 19 (6) of the Convention, the search criteria for an aircraft object shall be the name of its manufacturer, its manufacturer's serial number and its model designation, supplemented as necessary to ensure uniqueness. Such supplementary information shall be specified in the regulations.

2. For the purposes of Article 25(2) of the Convention and in the circumstances there described, the holder of a registered prospective international interest or a registered prospective assignment of an international interest or the person in whose favour a prospective sale has been registered shall take such steps as are within its power to procure the discharge of the registration no later than five working days after the receipt of the demand described in such paragraph.

3. The fees referred to in Article 17(2)(h) of the Convention shall be determined so as to recover the reasonable costs of establishing, operating and regulating the International Registry and the reasonable costs of the Supervisory Authority associated with the performance of the functions, exercise of the powers, and discharge of the duties contemplated by Article 17(2) of the Convention.

4. The centralised functions of the International Registry shall be operated and administered by the Registrar on a twenty-four hour basis. The various entry points shall be operated at least during working hours in their respective territories.

5. The amount of the insurance or financial guarantee referred to in Article 28(4) of the Convention shall, in respect of each event, not be less than the maximum value of an aircraft object as determined by the Supervisory Authority.

6. Nothing in the Convention shall preclude the Registrar from procuring insurance or a financial guarantee covering events for which the Registrar is not liable under Article 28 of the Convention.

CHAPTER IV
JURISDICTION

Article XXI — Modification of jurisdiction provisions

For the purposes of Article 43 of the Convention and subject to Article 42 of the Convention, a court of a Contracting State also has jurisdiction where the object is a helicopter, or an airframe pertaining to an aircraft, for which that State is the State of registry.

Article XXII — Waivers of sovereign immunity

1. Subject to paragraph 2, a waiver of sovereign immunity from jurisdiction of the courts specified in Article 42 or Article 43 of the Convention or relating to enforcement of rights and interests relating to an aircraft object under the Convention shall be binding and, if the other conditions to such jurisdiction or enforcement have been satisfied, shall be effective to confer jurisdiction and permit enforcement, as the case may be.
2. A waiver under the preceding paragraph must be in writing and contain a description of the aircraft object.

CHAPTER V
RELATIONSHIP WITH OTHER CONVENTIONSArticle XXIII — Relationship with the Convention on
the International Recognition of Rights in Aircraft

The Convention shall, for a Contracting State that is a party to the *Convention on the International Recognition of Rights in Aircraft*, signed at Geneva on 19 June 1948, supersede that Convention as it relates to aircraft, as defined in this Protocol, and to aircraft objects. However, with respect to rights or interests not covered or affected by the present Convention, the Geneva Convention shall not be superseded.

Article XXIV — Relationship with the Convention for the Unification
of Certain Rules Relating to the Precautionary Attachment of Aircraft

1. The Convention shall, for a Contracting State that is a Party to the *Convention for the Unification of Certain Rules Relating to the Precautionary Attachment of Aircraft*, signed at Rome on 29 May 1933, supersede that Convention as it relates to aircraft, as defined in this Protocol.
2. A Contracting State Party to the above Convention may declare, at the time of ratification, acceptance, approval of, or accession to this Protocol, that it will not apply this Article.

Article XXV — Relationship with the Unidroit Convention on
International Financial Leasing

The Convention shall supersede the

, signed at Ottawa on 28 May 1988, as it relates to aircraft objects.

CHAPTER VI
FINAL PROVISIONS

Article XXVI — Signature, ratification, acceptance, approval or accession

1. This Protocol shall be open for signature in Cape Town on 16 November 2001 by States participating in the Diplomatic Conference to Adopt a Mobile Equipment Convention and an Aircraft Protocol held at Cape Town from 29 October to 16 November 2001. After 16 November 2001, this Protocol shall be open to all States for signature at the Headquarters of the International Institute for the Unification of Private Law (Unidroit) in Rome until it enters into force in accordance with Article XXVIII.
2. This Protocol shall be subject to ratification, acceptance or approval by States which have signed it.
3. Any State which does not sign this Protocol may accede to it at any time.
4. Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the Depositary.
5. A State may not become a Party to this Protocol unless it is or becomes also a Party to the Convention.

Article XXVII — Regional Economic Integration Organizations

1. A Regional Economic Integration Organization which is constituted by sovereign States and has competence over certain matters governed by this Protocol may similarly sign, accept, approve or accede to this Protocol. The Regional Economic Integration Organization shall in that case have the rights and obligations of a Contracting State, to the extent that that Organization has competence over matters governed by this Protocol. Where the number of Contracting States is relevant in this Protocol, the Regional Economic Integration Organization shall not count as a Contracting State in addition to its Member States which are Contracting States.
2. The Regional Economic Integration Organization shall, at the time of signature, acceptance, approval or accession, make a declaration to the Depositary specifying the matters governed by this Protocol in respect of which competence has been transferred to that Organization by its Member States. The Regional Economic Integration Organization shall promptly notify the Depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.
3. Any reference to a “Contracting State” or “Contracting States” or “State Party” or “States Parties” in this Protocol applies equally to a Regional Economic Integration Organization where the context so requires.

Article XXVIII — Entry into force

1. This Protocol enters into force on the first day of the month following the expiration of three months after the date of the deposit of the eighth instrument of ratification, acceptance, approval or accession, between the States which have deposited such instruments.
2. For other States this Protocol enters into force on the first day of the month following the expiration of three months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

Article XXIX — Territorial units

1. If a Contracting State has territorial units in which different systems of law are applicable in relation to the matters dealt with in this Protocol, it may, at the time of ratification, acceptance, approval or accession, declare that this Protocol is to extend to all its territorial units or only to one or more of them and may modify its declaration by submitting another declaration at any time.
2. Any such declaration shall state expressly the territorial units to which this Protocol applies.
3. If a Contracting State has not made any declaration under paragraph 1, this Protocol shall apply to all territorial units of that State.
4. Where a Contracting State extends this Protocol to one or more of its territorial units, declarations permitted under this Protocol may be made in respect of each such territorial unit, and the declarations made in respect of one territorial unit may be different from those made in respect of another territorial unit.
5. If by virtue of a declaration under paragraph 1, this Protocol extends to one or more territorial units of a Contracting State:
 - (a) the debtor is considered to be situated in a Contracting State only if it is incorporated or formed under a law in force in a territorial unit to which the Convention and this Protocol apply or if it has its registered office or statutory seat, centre of administration, place of business or habitual residence in a territorial unit to which the Convention and this Protocol apply;
 - (b) any reference to the location of the object in a Contracting State refers to the location of the object in a territorial unit to which the Convention and this Protocol apply; and
 - (c) any reference to the administrative authorities in that Contracting State shall be construed as referring to the administrative authorities having jurisdiction in a territorial unit to which the Convention and this Protocol apply and any reference to the national register or to the registry authority in that Contracting State shall be construed as referring to the aircraft register in force or to the registry authority having jurisdiction in the territorial unit or units to which the Convention and this Protocol apply.

Article XXX — Declarations relating to certain provisions

1. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply any one or more of Articles VIII, XII and XIII of this Protocol.
2. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply Article X of this Protocol, wholly or in part. If it so declares with respect to Article X(2), it shall specify the time-period required thereby.
3. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply the entirety of Alternative A, or the entirety of Alternative B of Article XI and, if so, shall specify the types of insolvency proceeding, if any, to which it will apply Alternative A and the types of insolvency proceeding, if any, to which it will apply Alternative B. A Contracting State making a declaration pursuant to this paragraph shall specify the time-period required by Article XI.
4. The courts of Contracting States shall apply Article XI in conformity with the declaration made by the Contracting State which is the primary insolvency jurisdiction.

5. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will not apply the provisions of Article XXI, wholly or in part. The declaration shall specify under which conditions the relevant Article will be applied, in case it will be applied partly, or otherwise which other forms of interim relief will be applied.

Article XXXI — Declarations under the Convention

Declarations made under the Convention, including those made under Articles 39, 40, 50, 53, 54, 55, 57, 58 and 60 of the Convention, shall be deemed to have also been made under this Protocol unless stated otherwise.

Article XXXII — Reservations and declarations

1. No reservations may be made to this Protocol but declarations authorised by Articles XXIV, XXIX, XXX, XXXI, XXXIII and XXXIV may be made in accordance with these provisions.
2. Any declaration or subsequent declaration or any withdrawal of a declaration made under this Protocol shall be notified in writing to the Depositary.

Article XXXIII — Subsequent declarations

1. A State Party may make a subsequent declaration, other than a declaration made in accordance with Article XXXI under Article 60 of the Convention, at any time after the date on which this Protocol has entered into force for it, by notifying the Depositary to that effect.
2. Any such subsequent declaration shall take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary. Where a longer period for that declaration to take effect is specified in the notification, it shall take effect upon the expiration of such longer period after receipt of the notification by the Depositary.
3. Notwithstanding the previous paragraphs, this Protocol shall continue to apply, as if no such subsequent declarations had been made, in respect of all rights and interests arising prior to the effective date of any such subsequent declaration.

Article XXXIV — Withdrawal of declarations

1. Any State Party having made a declaration under this Protocol, other than a declaration made in accordance with Article XXXI under Article 60 of the Convention, may withdraw it at any time by notifying the Depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary.
2. Notwithstanding the previous paragraph, this Protocol shall continue to apply, as if no such withdrawal of declaration had been made, in respect of all rights and interests arising prior to the effective date of any such withdrawal.

Article XXXV — Denunciations

1. Any State Party may denounce this Protocol by notification in writing to the Depositary.
2. Any such denunciation shall take effect on the first day of the month following the expiration of twelve months after the date of receipt of the notification by the Depositary.

3. Notwithstanding the previous paragraphs, this Protocol shall continue to apply, as if no such denunciation had been made, in respect of all rights and interests arising prior to the effective date of any such denunciation.

Article XXXVI — Review Conferences, amendments and related matters

1. The Depositary, in consultation with the Supervisory Authority, shall prepare reports yearly, or at such other time as the circumstances may require, for the States Parties as to the manner in which the international regime established in the Convention as amended by this Protocol has operated in practice. In preparing such reports, the Depositary shall take into account the reports of the Supervisory Authority concerning the functioning of the international registration system.

2. At the request of not less than twenty-five per cent of the States Parties, Review Conferences of the States Parties shall be convened from time to time by the Depositary, in consultation with the Supervisory Authority, to consider:

- (a) the practical operation of the Convention as amended by this Protocol and its effectiveness in facilitating the asset-based financing and leasing of the objects covered by its terms;
- (b) the judicial interpretation given to, and the application made of the terms of this Protocol and the regulations;
- (c) the functioning of the international registration system, the performance of the Registrar and its oversight by the Supervisory Authority, taking into account the reports of the Supervisory Authority; and
- (d) whether any modifications to this Protocol or the arrangements relating to the International Registry are desirable.

3. Any amendment to this Protocol shall be approved by at least a two-thirds majority of States Parties participating in the Conference referred to in the preceding paragraph and shall then enter into force in respect of States which have ratified, accepted or approved such amendment when it has been ratified, accepted or approved by eight States in accordance with the provisions of Article XXVIII relating to its entry into force.

Article XXXVII — Depositary and its functions

1. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Institute for the Unification of Private Law (Unidroit), which is hereby designated the Depositary.

2. The Depositary shall:

- (a) inform all Contracting States of:
 - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof,
 - (ii) the date of entry into force of this Protocol,
 - (iii) each declaration made in accordance with this Protocol, together with the date thereof,
 - (iv) the withdrawal or amendment of any declaration, together with the date thereof, and
 - (v) the notification of any denunciation of this Protocol together with the date thereof and the date on which it takes effect;
- (b) transmit certified true copies of this Protocol to all Contracting States;
- (c) provide the Supervisory Authority and the Registrar with a copy of each instrument of ratification, acceptance, approval or accession, together with the date

of deposit thereof, of each declaration or withdrawal or amendment of a declaration and of each notification of denunciation, together with the date of notification thereof, so that the information contained therein is easily and fully available; and

(d) perform such other functions customary for depositaries.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorised, have signed this Protocol.

DONE at Cape Town, this sixteenth day of November, two thousand and one, in a single original in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic, such authenticity to take effect upon verification by the Joint Secretariat of the Conference under the authority of the President of the Conference within ninety days hereof as to the conformity of the texts with one another.

ANNEX

FORM OF IRREVOCABLE DE-REGISTRATION
AND EXPORT REQUEST AUTHORIZATION

Annex referred to in Article XIII

[Insert Date]

To: [Insert Name of Registry Authority]

Re: Irrevocable De-Registration and Export Request Authorization

The undersigned is the registered [operator] [owner]* of the [insert the airframe/helicopter manufacturer name and model number] bearing manufacturers serial number [insert manufacturer's serial number] and registration [number] [mark] [insert registration number/mark] (together with all installed, incorporated or attached accessories, parts and equipment, the "aircraft").

This instrument is an irrevocable de-registration and export request authorization issued by the undersigned in favour of [insert name of creditor] ("the authorised party") under the authority of Article XIII of the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment. In accordance with that Article, the undersigned hereby requests:

- (i) recognition that the authorised party or the person it certifies as its designee is the sole person entitled to:
 - (a) procure the de-registration of the aircraft from the [insert name of aircraft register] maintained by the [insert name of registry authority] for the purposes of Chapter III of the *Convention on International Civil Aviation*, signed at Chicago, on 7 December 1944, and
 - (b) procure the export and physical transfer of the aircraft from [insert name of country]; and
- (ii) confirmation that the authorised party or the person it certifies as its designee may take the action specified in clause (i) above on written demand without the consent of the undersigned and that, upon such demand, the authorities in [insert name of country] shall co-operate with the authorised party with a view to the speedy completion of such action.

The rights in favour of the authorised party established by this instrument may not be revoked by the undersigned without the written consent of the authorised party.

* Select the term that reflects the relevant nationality registration criterion.

CHAPTER I-18

**An Act to Implement the
United Nations Convention on Contracts
for the International Sale of Goods**

Table of Contents

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

	Section
Short title.....	1
“Convention” defined	2
Application in Province	3
Regulations.....	4
Conflict.....	5
Contracting out.....	6
Schedule	

Short title

1 This Act may be cited as the *International Sale of Goods Act*. 1988, c. 13, s. 1.

“Convention” defined

2 In this Act, “Convention” means the United Nations Convention on Contracts for the International Sale of Goods set out in the Schedule. 1988, c. 13, s. 2.

Application in Province

3 On the date the Convention comes into force in Canada in accordance with Article 99 of the Convention, the Convention applies in Nova Scotia. 1988, c. 13, s. 4.

Regulations

4 The Governor in Council may make such regulations as are necessary to carry out the intent and purpose of this Act. 1988, c. 13, s. 6.

Conflict

5 Where there is a conflict between this Act and any other enactment, this Act prevails. 1988, c. 13, s. 7.

Contracting out

6 Unless parties to a contract to which the Convention would otherwise apply exclude its application by expressly providing in the contract that the law, other than this Act, of Nova Scotia or another jurisdiction applies to it or that the Convention does not apply to the contract, then the Convention applies to the contract. 1988, c. 13, s. 8.

SCHEDULE

UNITED NATIONS CONVENTION ON CONTRACTS
FOR THE INTERNATIONAL SALE OF GOODS

THE STATES PARTIES TO THIS CONVENTION,

BEARING IN MIND the broad objectives in the resolutions adopted by the sixth special session of the General Assembly of the United Nations on the establishment of a New International Economic Order,

CONSIDERING that the development of international trade on the basis of equality and mutual benefit is an important element in promoting friendly relations among States,

BEING OF THE OPINION that the adoption of uniform rules which govern contracts for the international sale of goods and take into account the different social, economic and legal systems would contribute to the removal of legal barriers in international trade and promote the development of international trade,

HAVE AGREED as follows:

PART I

SPHERE OF APPLICATION AND GENERAL PROVISIONS

Chapter I

SPHERE OF APPLICATION

Article 1

(1) This Convention applies to contracts of sale of goods between parties whose places of business are in different States:

- (a) when the States are Contracting States; or
- (b) when the rules of private international law lead to the application of the law of a Contracting State.

(2) The fact that the parties have their places of business in different States is to be disregarded whenever this fact does not appear either from the contract or from any dealings between, or from information disclosed by, the parties at any time before or at the conclusion of the contract.

(3) Neither the nationality of the parties nor the civil or commercial character of the parties or of the contract is to be taken into consideration in determining the application of this Convention.

Article 2

This Convention does not apply to sales:

- (a) of goods bought for personal, family or household use, unless the seller, at any time before or at the conclusion of the contract, neither knew nor ought to have known that the goods were bought for any such use;
- (b) by auction;
- (c) on execution or otherwise by authority of law;
- (d) of stocks, shares, investment securities, negotiable instruments or money;
- (e) of ships, vessels, hovercraft or aircraft;
- (f) of electricity.

Article 3

(1) Contracts for the supply of goods to be manufactured or produced are to be considered sales unless the party who orders the goods undertakes to supply a substantial part of the materials necessary for such manufacture or production.

(2) This Convention does not apply to contracts in which the preponderant part of the obligations of the party who furnishes the goods consists in the supply of labour or other services.

Article 4

This Convention governs only the formation of the contract of sale and the rights and obligations of the seller and the buyer arising from such a contract. In particular, except as otherwise expressly provided in this Convention, it is not concerned with:

- (a) the validity of the contract or of any of its provisions or of any usage;
- (b) the effect which the contract may have on the property in the goods sold.

Article 5

This Convention does not apply to the liability of the seller for death or personal injury caused by the goods to any person.

Article 6

The parties may exclude the application of this Convention or, subject to article 12, derogate from or vary the effect of any of its provisions.

Chapter II

GENERAL PROVISIONS

Article 7

(1) In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade.

(2) Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law.

Article 8

(1) For the purpose of this Convention statements made by and other conduct of a party are to be interpreted according to his intent where the other party knew or could not have been unaware what that intent was.

(2) If the preceding paragraph is not applicable, statements made by and other conduct of a party are to be interpreted according to the understanding that a reasonable person of the same kind as the other party would have had in the same circumstances.

(3) In determining the intent of a party or the understanding a reasonable person would have had, due consideration is to be given to all relevant circumstances of the case including the negotiations, any practices which the parties have established between themselves, usages and any subsequent conduct of the parties.

Article 9

(1) The parties are bound by any usage to which they have agreed and by any practices which they have established between themselves.

(2) The parties are considered, unless otherwise agreed, to have impliedly made applicable to their contract or its formation a usage of which the parties knew or ought to have known and which in international trade is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade concerned.

Article 10

For the purposes of this Convention:

(a) if a party has more than one place of business, the place of business is that which has the closest relationship to the contract and its performance, having regard to the circumstances known to or contemplated by the parties at any time before or at the conclusion of the contract;

(b) if a party does not have a place of business, reference is to be made to his habitual residence.

Article 11

A contract of sale need not be concluded in or evidenced by writing and is not subject to any other requirement as to form. It may be proved by any means, including witnesses.

Article 12

Any provision of article 11, article 29 or Part II of this Convention that allows a contract of sale or its modification or termination by agreement or any offer, acceptance or other indication of intention to be made in any form other than in writing does not apply where any party has his place of business in a Contracting State which has made a declaration under article 96 of this Convention. The parties may not derogate from or vary the effect of this article.

Article 13

For the purposes of this Convention "writing" includes telegram and telex.

PART II

FORMATION OF THE CONTRACT

Article 14

(1) A proposal for concluding a contract addressed to one or more specific persons constitutes an offer if it is sufficiently definite and indicates the intention of the offeror to be bound in case of acceptance. A proposal is sufficiently definite if it indicates the goods and expressly or implicitly fixes or makes provision for determining the quantity and the price.

(2) A proposal other than one addressed to one or more specific persons is to be considered merely as an invitation to make offers, unless the contrary is clearly indicated by the person making the proposal.

Article 15

(1) An offer becomes effective when it reaches the offeree.

(2) An offer, even if it is irrevocable, may be withdrawn if the withdrawal reaches the offeree before or at the same time as the offer.

Article 16

- (1) Until a contract is concluded an offer may be revoked if the revocation reaches the offeree before he has dispatched an acceptance.
- (2) However, an offer cannot be revoked:
 - (a) if it indicates, whether by stating a fixed time for acceptance or otherwise, that it is irrevocable; or
 - (b) if it was reasonable for the offeree to rely on the offer as being irrevocable and the offeree has acted in reliance on the offer.

Article 17

An offer, even if it is irrevocable, is terminated when a rejection reaches the offeror.

Article 18

- (1) A statement made by or other conduct of the offeree indicating assent to an offer is an acceptance. Silence or inactivity does not in itself amount to acceptance.
- (2) An acceptance of an offer becomes effective at the moment the indication of assent reaches the offeror. An acceptance is not effective if the indication of assent does not reach the offeror within the time he has fixed or, if no time is fixed, within a reasonable time, due account being taken of the circumstances of the transaction, including the rapidity of the means of communication employed by the offeror. An oral offer must be accepted immediately unless the circumstances indicate otherwise.
- (3) However, if, by virtue of the offer as a result of practices which the parties have established between themselves or of usage, the offeree may indicate assent by performing an act, such as one relating to the dispatch of the goods or payment of the price, without notice to the offeror, the acceptance is effective at the moment the act is performed, provided that the act is performed within the period of time laid down in the preceding paragraph.

Article 19

- (1) A reply to an offer which purports to be an acceptance but contains additions, limitations or other modifications is a rejection of the offer and constitutes a counter-offer.
- (2) However, a reply to an offer which purports to be an acceptance but contains additional or different terms which do not materially alter the terms of the offer constitutes an acceptance, unless the offeror, without undue delay, objects orally to the discrepancy or dispatches a notice to that effect. If he does not so object, the terms of the contract are the terms of the offer with the modifications contained in the acceptance.
- (3) Additional or different terms relating, among other things, to the price, payment, quality and quantity of the goods, place and time of delivery, extent of one party's liability to the other or the settlement of disputes are considered to alter the terms of the offer materially.

Article 20

- (1) A period of time for acceptance fixed by the offeror in a telegram or a letter begins to run from the moment the telegram is handed in for dispatch or from the date shown on the letter or, if no such date is shown, from the date shown on the envelope. A period of time for acceptance fixed by the offeror by telephone, telex or other means of instantaneous communication, begins to run from the moment that the offer reaches the offeree.
- (2) Official holidays or non-business days occurring during the period for acceptance are included in calculating the period. However, if a notice of acceptance cannot be delivered at the address of the offeror on the last day of the period because that day falls on an official holiday or a non-business day at the place of business of the offeror, the period is extended until the first business day which follows.

Article 21

(1) A late acceptance is nevertheless effective as an acceptance if without delay the offeror orally so informs the offeree or dispatches a notice to that effect.

(2) If a letter or other writing containing a late acceptance shows that it has been sent in such circumstances that if its transmission had been normal it would have reached the offeror in due time, the late acceptance is effective as an acceptance unless, without delay, the offeror orally informs the offeree that he considers his offer as having lapsed or dispatches a notice to that effect.

Article 22

An acceptance may be withdrawn if the withdrawal reaches the offeror before or at the same time as the acceptance would have become effective.

Article 23

A contract is concluded at the moment when an acceptance of an offer becomes effective in accordance with the provisions of this Convention.

Article 24

For the purposes of this Part of the Convention, an offer, declaration of acceptance or any other indication of intention "reaches" the addressee when it is made orally to him or delivered by any other means to him personally, to his place of business or mailing address or, if he does not have a place of business or mailing address, to his habitual residence.

PART III

SALE OF GOODS

Chapter I

GENERAL PROVISIONS

Article 25

A breach of contract committed by one of the parties is fundamental if it results in such detriment to the other party as substantially to deprive him of what he is entitled to expect under the contract, unless the party in breach did not foresee and a reasonable person of the same kind in the same circumstances would not have foreseen such a result.

Article 26

A declaration of avoidance of the contract is effective only if made by notice to the other party.

Article 27

Unless otherwise expressly provided in this Part of the Convention, if any notice, request or other communication is given or made by a party in accordance with this Part and by means appropriate in the circumstances, a delay or error in the transmission of the communication or its failure to arrive does not deprive that party of the right to rely on the communication.

Article 28

If, in accordance with the provisions of this Convention, one party is entitled to require performance of any obligation by the other party, a court is not bound to enter a

judgement for specific performance unless the court would do so under its own law in respect of similar contracts of sale not governed by this Convention.

Article 29

- (1) A contract may be modified or terminated by the mere agreement of the parties.
- (2) A contract in writing which contains a provision requiring any modification or termination by agreement to be in writing may not be otherwise modified or terminated by agreement. However, a party may be precluded by his conduct from asserting such a provision to the extent that the other party has relied on that conduct.

Chapter II

OBLIGATIONS OF THE SELLER

Article 30

The seller must deliver the goods, hand over any documents relating to them and transfer the property in the goods, as required by the contract and this Convention.

Section I

Delivery of the goods and handing over of documents

Article 31

If the seller is not bound to deliver the goods at any other particular place, his obligation to deliver consists:

- (a) if the contract of sale involves carriage of the goods — in handing the goods over to the first carrier for transmission to the buyer;
- (b) if, in cases not within the preceding subparagraph, the contract relates to specific goods, or unidentified goods to be drawn from a specific stock or to be manufactured or produced, and at the time of the conclusion of the contract the parties knew that the goods were at, or were to be manufactured or produced at, a particular place — in placing the goods at the buyer's disposal at that place;
- (c) in other cases — in placing the goods at the buyer's disposal at the place where the seller had his place of business at the time of the conclusion of the contract.

Article 32

- (1) If the seller, in accordance with the contract or this Convention, hands the goods over to a carrier and if the goods are not clearly identified to the contract by markings on the goods, by shipping documents or otherwise, the seller must give the buyer notice of the consignment specifying the goods.
- (2) If the seller is bound to arrange for carriage of the goods, he must make such contracts as are necessary for carriage to the place fixed by means of transportation appropriate in the circumstances and according to the usual terms for such transportation.
- (3) If the seller is not bound to effect insurance in respect of the carriage of the goods, he must, at the buyer's request, provide him with all available information necessary to enable him to effect such insurance.

Article 33

The seller must deliver the goods:

- (a) if a date is fixed by or determinable from the contract, on that date;
- (b) if a period of time is fixed by or determinable from the contract, at any time within that period unless circumstances indicate that the buyer is to choose a date; or
- (c) in any other case, within a reasonable time after the conclusion of the contract.

Article 34

If the seller is bound to hand over documents relating to the goods, he must hand them over at the time and place and in the form required by the contract. If the seller has handed over documents before that time, he may, up to that time, cure any lack of conformity in the documents, if the exercise of this right does not cause the buyer unreasonable inconvenience or unreasonable expense. However, the buyer retains any right to claim damages as provided for in this Convention.

Section II

Conformity of the goods and third-party claims

Article 35

- (1) The seller must deliver goods which are of the quantity, quality and description required by the contract and which are contained or packaged in the manner required by the contract.
- (2) Except where the parties have agreed otherwise, the goods do not conform with the contract unless they:
 - (a) are fit for the purpose for which goods of the same description would ordinarily be used;
 - (b) are fit for any particular purpose expressly or impliedly made known to the seller at the time of the conclusion of the contract, except where the circumstances show that the buyer did not rely, or that it was unreasonable for him to rely, on the seller's skill and judgment;
 - (c) possess the qualities of goods which the seller has held out to the buyer as a sample or model;
 - (d) are contained or packaged in the manner usual for such goods or, where there is no such manner, in a manner adequate to preserve and protect the goods.
- (3) The seller is not liable under subparagraphs (a) to (d) of the preceding paragraph for any lack of conformity of the goods if, at the time of the conclusion of the contract, the buyer knew or could not have been unaware of such lack of conformity.

Article 36

- (1) The seller is liable in accordance with the contract and this Convention for any lack of conformity which exists at the time when the risk passes to the buyer, even though the lack of conformity becomes apparent only after that time.
- (2) The seller is also liable for any lack of conformity which occurs after the time indicated in the preceding paragraph and which is due to a breach of any of his obligations, including a breach of any guarantee that for a period of time the goods will remain fit for their ordinary purpose or for some particular purpose or will retain specified qualities or characteristics.

Article 37

If the seller has delivered goods before the date for delivery, he may, up to that date, deliver any missing part or make up any deficiency in the quantity of the goods delivered, or deliver goods in replacement of any non-conforming goods delivered or remedy any lack of conformity in the goods delivered, provided that the exercise of this right does not cause the buyer unreasonable inconvenience or unreasonable expense. However, the buyer retains any right to claim damages as provided for in this Convention.

Article 38

(1) The buyer must examine the goods, or cause them to be examined, within as short a period as is practicable in the circumstances.

(2) If the contract involves carriage of the goods, examination may be deferred until after the goods have arrived at their destination.

(3) If the goods are redirected in transit or redispached by the buyer without a reasonable opportunity for examination by him and at the time of the conclusion of the contract the seller knew or ought to have known of the possibility of such redirection or redispach, examination may be deferred until after the goods have arrived at the new destination.

Article 39

(1) The buyer loses the right to rely on a lack of conformity of the goods if he does not give notice to the seller specifying the nature of the lack of conformity within a reasonable time after he has discovered it or ought to have discovered it.

(2) In any event, the buyer loses the right to rely on a lack of conformity of the goods if he does not give the seller notice thereof at the latest within a period of two years from the date on which the goods were actually handed over to the buyer, unless this time limit is inconsistent with a contractual period of guarantee.

Article 40

The seller is not entitled to rely on the provisions of articles 38 and 39 if the lack of conformity relates to facts of which he knew or could not have been unaware and which he did not disclose to the buyer.

Article 41

The seller must deliver goods which are free from any right or claim of a third party, unless the buyer agreed to take the goods subject to that right or claim. However, if such right or claim is based on industrial property or other intellectual property, the seller's obligations is governed by article 42.

Article 42

(1) The seller must deliver goods which are free from any right or claim of a third party based on industrial property or other intellectual property, of which at the time of the conclusion of the contract the seller knew or could not have been unaware, provided that the right or claim is based on industrial property or other intellectual property:

(a) under the law of the State where the goods will be resold or otherwise used, if it was contemplated by the parties at the time of the conclusion of the contract that the goods would be resold or otherwise used in that State; or

(b) in any other case, under the law of the State where the buyer has his place of business.

(2) The obligation of the seller under the preceding paragraph does not extend to cases where:

- (a) at the time of the conclusion of the contract the buyer knew or could not have been unaware of the right or claim; or
- (b) the right or claim results from the seller's compliance with technical drawings, designs, formulae or other such specifications furnished by the buyer.

Article 43

- (1) The buyer loses the right to rely on the provisions of article 41 or article 42 if he does not give notice to the seller specifying the nature of the right or claim of the third party within a reasonable time after he has become aware or ought to have become aware of the right or claim.
- (2) The seller is not entitled to rely on the provisions of the preceding paragraph if he knew of the right or claim of the third party and the nature of it.

Article 44

Notwithstanding the provisions of paragraph (1) of article 39 and paragraph (1) of article 43, the buyer may reduce the price in accordance with article 50 or claim damages, except for loss of profit, if he has a reasonable excuse for his failure to give the required notice.

Section III

Remedies for breach of contract by the seller

Article 45

- (1) If the seller fails to perform any of his obligations under the contract or this Convention, the buyer may:
 - (a) exercise the rights provided in articles 46 to 52;
 - (b) claim damages as provided in articles 74 to 77.
- (2) The buyer is not deprived of any right he may have to claim damages by exercising his right to other remedies.
- (3) No period of grace may be granted to the seller by a court or arbitral tribunal when the buyer resorts to a remedy for breach of contract.

Article 46

- (1) The buyer may require performance by the seller of his obligations unless the buyer has resorted to a remedy which is inconsistent with this requirement.
- (2) If the goods do not conform with the contract, the buyer may require delivery of substitute goods only if the lack of conformity constitutes a fundamental breach of contract and a request for substitute goods is made either in conjunction with notice given under article 39 or within a reasonable time thereafter.
- (3) If the goods do not conform with the contract, the buyer may require the seller to remedy the lack of conformity by repair, unless this is unreasonable having regard to all the circumstances. A request for repair must be made either in conjunction with notice given under article 39 or within a reasonable time thereafter.

Article 47

- (1) The buyer may fix an additional period of time of reasonable length for performance by the seller of his obligations.
- (2) Unless the buyer has received notice from the seller that he will not perform within the period so fixed, the buyer may not, during that period, resort to any remedy for

breach of contract. However, the buyer is not deprived thereby of any right he may have to claim damages for delay in performance.

Article 48

(1) Subject to article 49, the seller may, even after the date for delivery, remedy at his own expense any failure to perform his obligations, if he can do so without unreasonable delay and without causing the buyer unreasonable inconvenience or uncertainty of reimbursement by the seller of expenses advanced by the buyer. However, the buyer retains any right to claim damages as provided for in this Convention.

(2) If the seller requests the buyer to make known whether he will accept performance and the buyer does not comply with the request within a reasonable time, the seller may perform within the time indicated in his request. The buyer may not, during that period of time, resort to any remedy which is inconsistent with performance by the seller.

(3) A notice by the seller that he will perform within a specified period of time is assumed to include a request, under the preceding paragraph, that the buyer make known his decision.

(4) A request or notice by the seller under paragraph (2) or (3) of this article is not effective unless received by the buyer.

Article 49

(1) The buyer may declare the contract avoided:

(a) if the failure by the seller to perform any of his obligations under the contract or this Convention amounts to a fundamental breach of contract; or

(b) in case of non-delivery, if the seller does not deliver the goods within the additional period of time fixed by the buyer in accordance with paragraph (1) of article 47 or declares that he will not deliver within the period so fixed.

(2) However, in cases where the seller has delivered the goods, the buyer loses the right to declare the contract avoided unless he does so:

(a) in respect of late delivery, within a reasonable time after he has become aware that delivery has been made;

(b) in respect of any breach other than late delivery, within a reasonable time:

(i) after he knew or ought to have known of the breach;

(ii) after the expiration of any additional period of time fixed by the buyer in accordance with paragraph (1) of article 47, or after the seller has declared that he will not perform his obligations within such an additional period; or

(iii) after the expiration of any additional period of time indicated by the seller in accordance with paragraph (2) of article 48, or after the buyer has declared that he will not accept performance.

Article 50

If the goods do not conform with the contract and whether or not the price has already been paid, the buyer may reduce the price in the same proportion as the value that the goods actually delivered had at the time of the delivery bears to the value that conforming goods would have had at that time. However, if the seller remedies any failure to perform his obligations in accordance with article 37 or article 48 or if the buyer refuses to accept performance by the seller in accordance with those articles, the buyer may not reduce the price.

Article 51

(1) If the seller delivers only a part of the goods or if only a part of the goods delivered is in conformity with the contract, articles 46 to 50 apply in respect of the part which is missing or which does not conform.

(2) The buyer may declare the contract avoided in its entirety only if the failure to make delivery completely or in conformity with the contract amounts to a fundamental breach of the contract.

Article 52

(1) If the seller delivers the goods before the date fixed, the buyer may take delivery or refuse to take delivery.

(2) If the seller delivers a quantity of goods greater than that provided for in the contract, the buyer may take delivery or refuse to take delivery of the excess quantity. If the buyer takes delivery of all or part of the excess quantity, he must pay for it at the contract rate.

Chapter III

OBLIGATIONS OF THE BUYER

Article 53

The buyer must pay the price for the goods and take delivery of them as required by the contract and this Convention.

Section I

Payment of the price

Article 54

The buyer's obligation to pay the price includes taking such steps and complying with such formalities as may be required under the contract or any laws and regulations to enable payment to be made.

Article 55

Where a contract has been validly concluded but does not expressly or implicitly fix or make provision for determining the price, the parties are considered, in the absence of any indication to the contrary, to have impliedly made reference to the price generally charged at the time of the conclusion of the contract for such goods sold under comparable circumstances in the trade concerned.

Article 56

If the price is fixed according to the weight of the goods, in case of doubt it is to be determined by net weight.

Article 57

(1) If the buyer is not bound to pay the price at any other particular place, he must pay it to the seller:

- (a) at the seller's place of business; or
- (b) if the payment is to be made against the handing over of the goods or of documents, at the place where the handing over takes place.

(2) The seller must bear any increase in the expenses incidental to payment which is caused by a change in his place of business subsequent to the conclusion of the contract.

Article 58

(1) If the buyer is not bound to pay the price at any other specific time, he must pay it when the seller places either the goods or documents controlling their disposition at the buyer's disposal in accordance with the contract and this Convention. The seller may make such payment a condition for handing over the goods or documents.

(2) If the contract involves carriage of the goods, the seller may dispatch the goods on terms whereby the goods, or documents controlling their disposition, will not be handed over to the buyer except against payment of the price.

(3) The buyer is not bound to pay the price until he has had an opportunity to examine the goods, unless the procedures for delivery or payment agreed upon by the parties are inconsistent with his having such an opportunity.

Article 59

The buyer must pay the price on the date fixed by or determinable from the contract and this Convention without the need for any request or compliance with any formality on the part of the seller.

Section II

Taking delivery

Article 60

The buyer's obligation to take delivery consists:

- (a) in doing all the acts which could reasonably be expected of him in order to enable the seller to make delivery; and
- (b) in taking over the goods.

Section III

Remedies for breach of contract by the buyer

Article 61

(1) If the buyer fails to perform any of his obligations under the contract or this Convention, the seller may:

- (a) exercise the rights provided in articles 62 to 65;
- (b) claim damages as provided in articles 74 to 77.

(2) The seller is not deprived of any right he may have to claim damages by exercising his right to other remedies.

(3) No period of grace may be granted to the buyer by a court or arbitral tribunal when the seller resorts to a remedy for breach of contract.

Article 62

The seller may require the buyer to pay the price, take delivery or perform his other obligations, unless the seller has resorted to a remedy which is inconsistent with this requirement.

Article 63

(1) The seller may fix an additional period of time of reasonable length for performance by the buyer of his obligations.

(2) Unless the seller has received notice from the buyer that he will not perform within the period so fixed, the seller may not, during that period, resort to any remedy for breach of contract. However, the seller is not deprived thereby of any right he may have to claim damages for delay in performance.

Article 64

(1) The seller may declare the contract avoided:

(a) if the failure by the buyer to perform any of his obligations under the contract or this Convention amounts to a fundamental breach of contract; or

(b) if the buyer does not, within the additional period of time fixed by the seller in accordance with paragraph (1) of article 63, perform his obligation to pay the price or take delivery of the goods, or if he declares that he will not do so within the period so fixed.

(2) However, in cases where the buyer has paid the price, the seller loses the right to declare the contract avoided unless he does so:

(a) in respect of late performance by the buyer, before the seller has become aware that performance has been rendered; or

(b) in respect of any breach other than late performance by the buyer, within a reasonable time:

(i) after the seller knew or ought to have known of the breach; or

(ii) after the expiration of any additional period of time fixed by the seller in accordance with paragraph (1) of article 63, or after the buyer has declared that he will not perform his obligations within such an additional period.

Article 65

(1) If under the contract the buyer is to specify the form, measurement or other features of the goods and he fails to make such specification either on the date agreed upon or within a reasonable time after receipt of a request from the seller, the seller may, without prejudice to any other rights he may have, make the specification himself in accordance with the requirements of the buyer that may be known to him.

(2) If the seller makes the specification himself, he must inform the buyer of the details thereof and must fix a reasonable time within which the buyer may make a different specification. If, after receipt of such a communication, the buyer fails to do so within the time so fixed, the specification made by the seller is binding.

Chapter IV

PASSING OF RISK

Article 66

Loss of or damage to the goods after the risk has passed to the buyer does not discharge him from his obligation to pay the price, unless the loss or damage is due to an act or omission of the seller.

Article 67

(1) If the contract of sale involves carriage of the goods and the seller is not bound to hand them over at a particular place, the risk passes to the buyer when the goods are

handed over to the first carrier for transmission to the buyer in accordance with the contract of sale. If the seller is bound to hand the goods over to a carrier at a particular place, the risk does not pass to the buyer until the goods are handed over to the carrier at that place. The fact that the seller is authorized to retain documents controlling the disposition of the goods does not affect the passage of the risk.

(2) Nevertheless, the risk does not pass to the buyer until the goods are clearly identified to the contract, whether by markings on the goods, by shipping documents, by notice given to the buyer or otherwise.

Article 68

The risk in respect of goods sold in transit passes to the buyer from the time of the conclusion of the contract. However, if the circumstances so indicate, the risk is assumed by the buyer from the time the goods were handed over to the carrier who issued the documents embodying the contract of carriage. Nevertheless, if at the time of the conclusion of the contract of sale the seller knew or ought to have known that the goods had been lost or damaged and did not disclose this to the buyer, the loss or damage is at the risk of the seller.

Article 69

(1) In cases not within articles 67 and 68, the risk passes to the buyer when he takes over the goods or, if he does not do so in due time, from the time when the goods are placed at his disposal and he commits a breach of contract by failing to take delivery.

(2) However, if the buyer is bound to take over the goods at a place other than a place of business of the seller, the risk passes when delivery is due and the buyer is aware of the fact that the goods are placed at his disposal at that place.

(3) If the contract relates to goods not then identified, the goods are considered not to be placed at the disposal of the buyer until they are clearly identified to the contract.

Article 70

If the seller has committed a fundamental breach of contract, articles 67, 68 and 69 do not impair the remedies available to the buyer on account of the breach.

Chapter V

PROVISIONS COMMON TO THE OBLIGATIONS OF THE SELLER AND OF THE BUYER

Section 1

Anticipatory breach and instalment contracts

Article 71

(1) A party may suspend the performance of his obligations if, after the conclusion of the contract, it becomes apparent that the other party will not perform a substantial part of his obligations as a result of:

(a) a serious deficiency in his ability to perform or in his creditworthiness; or

(b) his conduct in preparing to perform or in performing the contract.

(2) If the seller has already dispatched the goods before the grounds described in the preceding paragraph become evident, he may prevent the handing over of the goods to the buyer even though the buyer holds a document which entitles him to obtain them. The present paragraph relates only to the rights in the goods as between the buyer and the seller.

(3) A party suspending performance, whether before or after dispatch of the goods, must immediately give notice of the suspension to the other party and must continue with performance if the other party provides adequate assurance of his performance.

Article 72

(1) If prior to the date for performance of the contract it is clear that one of the parties will commit a fundamental breach of contract, the other party may declare the contract avoided.

(2) If time allows, the party intending to declare the contract avoided must give reasonable notice to the other party in order to permit him to provide adequate assurance of his performance.

(3) The requirements of the preceding paragraph do not apply if the other party has declared that he will not perform his obligations.

Article 73

(1) In the case of a contract for delivery of goods by instalments, if the failure of one party to perform any of his obligations in respect of any instalment constitutes a fundamental breach of contract with respect to that instalment, the other party may declare the contract avoided with respect to that instalment.

(2) If one party's failure to perform any of his obligations in respect of any instalment gives the other party good grounds to conclude that a fundamental breach of contract will occur with respect to future instalments, he may declare the contract avoided for the future, provided that he does so within a reasonable time.

(3) A buyer who declares the contract avoided in respect of any delivery may, at the same time, declare it avoided in respect of deliveries already made or of future deliveries if, by reason of their interdependence, those deliveries could not be used for the purpose contemplated by the parties at the time of the conclusion of the contract.

Section II

Damages

Article 74

Damages for breach of contract by one party consist of a sum equal to the loss, including loss of profit, suffered by the other party as a consequence of the breach. Such damages may not exceed the loss which the party in breach foresaw or ought to have foreseen at the time of the conclusion of the contract, in the light of the facts and matters of which he then knew or ought to have known, as a possible consequence of the breach of contract.

Article 75

If the contract is avoided and if, in a reasonable manner and within a reasonable time after avoidance, the buyer has bought goods in replacement or the seller has resold the goods, the party claiming damages may recover the difference between the contract price and the price in the substitute transaction as well as any further damages recoverable under article 74.

Article 76

(1) If the contract is avoided and there is a current price for the goods, the party claiming damages may, if he has not made a purchase or resale under article 75, recover the difference between the price fixed by the contract and the current price at the time of avoidance as well as any further damages recoverable under article 74. If, however, the party claiming damages has avoided the contract after taking over the goods, the current price at the time of such taking over shall be applied instead of the current price at the time of avoidance.

(2) For the purposes of the preceding paragraph, the current price is the price prevailing at the place where delivery of the goods should have been made or, if there is no current price at that place, the price at such other place as serves as a reasonable substitute, making due allowance for differences in the cost of transporting the goods.

Article 77

A party who relies on a breach of contract must take such measures as are reasonable in the circumstances to mitigate the loss, including loss of profit, resulting from the breach. If he fails to take such measures, the party in breach may claim a reduction in the damages in the amount by which the loss should have been mitigated.

Section III

Interest

Article 78

If a party fails to pay the price or any other sum that is in arrears, the other party is entitled to interest on it, without prejudice to any claim for damages recoverable under article 74.

Section IV

Exemptions

Article 79

(1) A party is not liable for a failure to perform any of his obligations if he proves that the failure was due to an impediment beyond his control and that he could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it, or its consequences.

(2) If the party's failure is due to the failure by a third person whom he has engaged to perform the whole or a part of the contract, that party is exempt from liability only if:

(a) he is exempt under the preceding paragraph; and

(b) the person whom he has so engaged would be so exempt if the provisions of that paragraph were applied to him.

(3) The exemption provided by this article has effect for the period during which the impediment exists.

(4) The party who fails to perform must give notice to the other party of the impediment and its effect on his ability to perform. If the notice is not received by the other party within a reasonable time after the party who fails to perform knew or ought to have known of the impediment, he is liable for damages resulting from such non-receipt.

(5) Nothing in this article prevents either party from exercising any right other than to claim damages under this Convention.

Article 80

A party may not rely on a failure of the other party to perform, to the extent that such failure was caused by the first party's act or omission.

Section V

Effects of avoidance

Article 81

(1) Avoidance of the contract releases both parties from their obligations under it, subject to any damages which may be due. Avoidance does not affect any provision of the contract for the settlement of disputes or any other provision of the contract governing the rights and obligations of the parties consequent upon the avoidance of the contract.

(2) A party who has performed the contract either wholly or in part may claim restitution from the other party of whatever the first party has supplied or paid under the contract. If both parties are bound to make restitution, they must do so concurrently.

Article 82

(1) The buyer loses the right to declare the contract avoided or to require the seller to deliver substitute goods if it is impossible for him to make restitution of the goods substantially in the condition in which he received them.

(2) The preceding paragraph does not apply:

(a) if the impossibility of making restitution of the goods or of making restitution of the goods substantially in the condition in which the buyer received them is not due to his act or omission;

(b) if the goods or part of the goods have perished or deteriorated as a result of the examination provided for in article 38; or

(c) if the goods or part of the goods have been sold in the normal course of business or have been consumed or transformed by the buyer in the course of normal use before he discovered or ought to have discovered the lack of conformity.

Article 83

A buyer who has lost the right to declare the contract avoided or to require the seller to deliver substitute goods in accordance with article 82 retains all other remedies under the contract and this Convention.

Article 84

(1) If the seller is bound to refund the price, he must also pay interest on it, from the date on which the price was paid.

(2) The buyer must account to the seller for all benefits which he has derived from the goods or part of them:

(a) if he must make restitution of the goods or part of them; or

(b) if it is impossible for him to make restitution of all or part of the goods or to make restitution of all or part of the goods substantially in the condition in which he received them, but he had nevertheless declared the contract avoided or required the seller to deliver substitute goods.

Section VI

Preservation of the goods

Article 85

If the buyer is in delay in taking delivery of the goods or, where payment of the price and delivery of the goods are to be made concurrently, if he fails to pay the price, and the seller is either in possession of the goods or otherwise able to control their disposition, the

seller must take such steps as are reasonable in the circumstances to preserve them. He is entitled to retain them until he has been reimbursed his reasonable expenses by the buyer.

Article 86

(1) If the buyer has received the goods and intends to exercise any right under the contract or this Convention to reject them, he must take such steps to preserve them as are reasonable in the circumstances. He is entitled to retain them until he has been reimbursed his reasonable expenses by the seller.

(2) If goods dispatched to the buyer have been placed at his disposal at their destination and he exercises the right to reject them, he must take possession of them on behalf of the seller, provided that this can be done without payment of the price and without unreasonable inconvenience or unreasonable expense. This provision does not apply if the seller or a person authorized to take charge of the goods on his behalf is present at the destination. If the buyer takes possession of the goods under this paragraph, his rights and obligations are governed by the preceding paragraph.

Article 87

A party who is bound to take steps to preserve the goods may deposit them in a warehouse of a third person at the expense of the other party provided that the expense incurred is not unreasonable.

Article 88

(1) A party who is bound to preserve the goods in accordance with article 85 or 86 may sell them by any appropriate means if there has been an unreasonable delay by the other party in taking possession of the goods or in taking them back or in paying the price or the cost of preservation, provided that reasonable notice of the intention to sell has been given to the other party.

(2) If the goods are subject to rapid deterioration or their preservation would involve unreasonable expense, a party who is bound to preserve the goods in accordance with article 85 or 86 must take reasonable measures to sell them. To the extent possible he must give notice to the other party of his intention to sell.

(3) A party selling the goods has the right to retain out of the proceeds of sale an amount equal to the reasonable expenses of preserving the goods and of selling them. He must account to the other party for the balance.

PART IV

FINAL PROVISIONS

Article 89

The Secretary-General of the United Nations is hereby designated as the depositary for this Convention.

Article 90

This Convention does not prevail over any international agreement which has already been or may be entered into and which contains provisions concerning the matters governed by this Convention, provided that the parties have their places of business in States parties to such agreement.

Article 91

(1) This Convention is open for signature at the concluding meeting of the United Nations Conference on Contracts for the International Sale of Goods and will remain

open for signature by all States at the Headquarters of the United Nations, New York until 30 September 1981.

(2) This Convention is subject to ratification, acceptance or approval by the signatory States.

(3) This Convention is open for accession by all States which are not signatory States as from the date it is open for signature.

(4) Instruments of ratification, acceptance, approval and accession are to be deposited with the Secretary-General of the United Nations.

Article 92

(1) A Contracting State may declare at the time of signature, ratification, acceptance, approval or accession that it will not be bound by Part II of this Convention or that it will not be bound by Part III of this Convention.

(2) A Contracting State which makes a declaration in accordance with the preceding paragraph in respect of Part II or Part III of this Convention is not to be considered a Contracting State within paragraph (1) of article 1 of this Convention in respect of matters governed by the Part to which the declaration applies.

Article 93

(1) If a Contracting State has two or more territorial units in which, according to its constitution, different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and may amend its declaration by submitting another declaration at any time.

(2) These declarations are to be notified to the depositary and are to state expressly the territorial units to which the Convention extends.

(3) If, by virtue of a declaration under this article, this Convention extends to one or more but not all of the territorial units of a Contracting State, and if the place of business of a party is located in that State, this place of business, for the purposes of this Convention, is considered not to be in a Contracting State, unless it is in a territorial unit to which the Convention extends.

(4) If a Contracting State makes no declaration under paragraph (1) of this article, the Convention is to extend to all territorial units of that State.

Article 94

(1) Two or more Contracting States which have the same or closely related legal rules on matters governed by this Convention may at any time declare that the Convention is not to apply to contracts of sale or to their formation where the parties have their places of business in those States. Such declarations may be made jointly or by reciprocal unilateral declarations.

(2) A Contracting State which has the same or closely related legal rules on matters governed by this Convention as one or more non-Contracting States may at any time declare that the Convention is not to apply to contracts of sale or to their formation where the parties have their places of business in those States.

(3) If a State which is the object of a declaration under the preceding paragraph subsequently becomes a Contracting State, the declaration made will, as from the date on which the Convention enters into force in respect of the new Contracting State, have the effect of a declaration made under paragraph (1), provided that the new Contracting State joins in such declaration or makes a reciprocal unilateral declaration.

Article 95

Any State may declare at the time of the deposit of its instrument of ratification, acceptance, approval or accession that it will not be bound by subparagraph (1)(b) of article 1 of this Convention.

Article 96

A Contracting State whose legislation requires contracts of sale to be concluded in or evidenced by writing may at any time make a declaration in accordance with article 12 that any provision of article 11, article 29, or Part II of this Convention, that allows a contract of sale or its modification or termination by agreement or any offer, acceptance, or other indication of intention to be made in any form other than in writing, does not apply where any party has his place of business in that State.

Article 97

(1) Declarations made under this Convention at the time of signature are subject to confirmation upon ratification, acceptance or approval.

(2) Declarations and confirmations of declarations are to be in writing and be formally notified to the depositary.

(3) A declaration takes effect simultaneously with the entry into force of this Convention in respect of the State concerned. However, a declaration of which the depositary receives formal notification after such entry into force takes effect on the first day of the month following the expiration of six months after the date of its receipt by the depositary. Reciprocal unilateral declarations under article 94 take effect on the first day of the month following the expiration of six months after the receipt of the latest declaration by the depositary.

(4) Any State which makes a declaration under this Convention may withdraw it at any time by a formal notification in writing addressed to the depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the depositary.

(5) A withdrawal of a declaration made under article 94 renders inoperative, as from the date on which the withdrawal takes effect, any reciprocal declaration made by another State under that article.

Article 98

No reservations are permitted except those expressly authorized by this Convention.

Article 99

(1) This Convention enters into force, subject to the provisions of paragraph (6) of this article, on the first day of the month following the expiration of twelve months after the date of deposit of the tenth instrument of ratification, acceptance, approval or accession, including an instrument which contains a declaration made under article 92.

(2) When a State ratifies, accepts, approves or accedes to this Convention after the deposit of the tenth instrument of ratification, acceptance, approval or accession, this Convention, with the exception of the Part excluded, enters into force in respect of that State, subject to the provisions of paragraph (6) of this article, on the first day of the month following the expiration of twelve months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

(3) A State which ratifies, accepts, approves or accedes to this Convention and is a party to either or both the Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods done at The Hague on 1 July 1964 (1964 Hague Formation Convention) and the Convention relating to a Uniform Law on the International Sale of Goods done at The Hague on 1 July 1964 (1964 Hague Sales Convention) shall at the

same time denounce, as the case may be, either or both the 1964 Hague Sales Convention and the 1964 Hague Formation Convention by notifying the Government of the Netherlands to that effect.

(4) A State party to the 1964 Hague Sales Convention which ratifies, accepts, approves or accedes to the present Convention and declares or has declared under article 92 that it will not be bound by Part II of this Convention shall at the time of ratification, acceptance, approval or accession denounce the 1964 Hague Sales Convention by notifying the Government of the Netherlands to that effect.

(5) A State party to the 1964 Hague Formation Convention which ratifies, accepts, approves or accedes to the present Convention and declares or has declared under article 92 that it will not be bound by Part III of this Convention shall at the time of ratification, acceptance, approval or accession denounce the 1964 Hague Formation Convention by notifying the Government of the Netherlands to that effect.

(6) For the purpose of this article, ratifications, acceptances, approvals or accessions in respect of this Convention by States parties to the 1964 Hague Formation Convention or to the 1964 Hague Sales Convention shall not be effective until such denunciations as may be required on the part of those States in respect of the latter two Conventions have themselves become effective. The depositary of this Convention shall consult with the Government of the Netherlands, as the depositary of the 1964 Conventions, so as to ensure necessary coordination in this respect.

Article 100

(1) This Convention applies to the formation of a contract only when the proposal for concluding the contract is made on or after the date when the Convention enters into force in respect of the Contracting States referred to in subparagraph (1)(a) or the Contracting State referred to in subparagraph (1)(b) of article 1.

(2) This Convention applies only to contracts concluded on or after the date when the Convention enters into force in respect of the Contracting States referred to in subparagraph (1)(a) or the Contracting State referred to in subparagraph (1)(b) of article 1.

Article 101

(1) A Contracting State may denounce this Convention, or Part II or Part III of the Convention, by a formal notification in writing addressed to the depositary.

(2) The denunciation takes effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

DONE at Vienna, this eleventh day of April, one thousand nine hundred and eighty, in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized by their respective Governments, have signed this Convention.

1988, c. 13, Sch.

CHAPTER I-19

**An Act to Implement the Hague Convention
on the Law Applicable to Trusts
and on Their Recognition**

Table of Contents

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

	Section
Short title.....	1
Interpretation.....	2
Application of Convention.....	3
Trusts declared by judicial decisions	4
Act binds the Crown	5

Short title

1 This Act may be cited as the *International Trusts Act*. 2005, c. 41, s. 1.

Interpretation

2 In this Act, “Convention” means the Convention on the Law Applicable to Trusts and on Their Recognition set out in the Schedule. 2005, c. 41, s. 2.

Application of Convention

3 (1) The Convention applies in the Province.

(2) This Act does not apply to conflicts solely between the laws of the provinces of Canada. 2005, c. 41, s. 3.

Trusts declared by judicial decisions

4 (1) The Convention is extended to trusts declared by judicial decisions, including constructive trusts and resulting trusts.

(2) Nothing in this Act is to be construed as requiring that recognition or effect be given to a trust declared by judicial decision in another state or a severable aspect of such a trust, if the Supreme Court of Nova Scotia is satisfied that there is a substantial reason for refusing to give recognition or effect to the trust or aspect. 2005, c. 41, s. 4.

Act binds the Crown

5 This Act binds the Crown. 2005, c. 41, s. 5.

SCHEDULE

CONVENTION ON THE LAW APPLICABLE TO TRUSTS
AND ON THEIR RECOGNITION

The States signatory to the present Convention,

Considering that the trust, as developed in courts of equity in common law jurisdictions and adopted with some modifications in other jurisdictions, is a unique legal institution,

Desiring to establish common provisions on the law applicable to trusts and to deal with the most important issues concerning the recognition of trusts,

Have resolved to conclude a Convention to this effect, and have agreed on the following provisions –

CHAPTER I – SCOPE

Article 1

This Convention specifies the law applicable to trusts and governs their recognition.

Article 2

For the purposes of this Convention, the term “trust” refers to the legal relationships created – inter vivos or on death – by a person, the settlor, when assets have been placed under the control of a trustee for the benefit of a beneficiary or for a specified purpose.

A trust has the following characteristics –

- (a) the assets constitute a separate fund and are not a part of the trustee’s own estate;
- (b) title to the trust assets stands in the name of the trustee or in the name of another person on behalf of the trustee;
- (c) the trustee has the power and the duty, in respect of which he is accountable, to manage, employ or dispose of the assets in accordance with the terms of the trust and the special duties imposed on him by law.

The reservation by the settlor of certain rights and powers, and the fact that the trustee may himself have rights as a beneficiary, are not necessarily inconsistent with the existence of a trust.

Article 3

The Convention applies only to trusts created voluntarily and evidenced in writing.

Article 4

The Convention does not apply to preliminary issues relating to the validity of wills or of other acts by virtue of which assets are transferred to the trustee.

Article 5

The Convention does not apply to the extent that the law specified by Chapter II does not provide for trusts or the category of trusts involved.

CHAPTER II – APPLICABLE LAW

Article 6

A trust shall be governed by the law chosen by the settlor. The choice must be express or be implied in the terms of the instrument creating or the writing evidencing the trust, interpreted, if necessary, in the light of the circumstances of the case.

Where the law chosen under the previous paragraph does not provide for trusts or the category of trust involved, the choice shall not be effective and the law specified in Article 7 shall apply.

Article 7

Where no applicable law has been chosen, a trust shall be governed by the law with which it is most closely connected.

In ascertaining the law with which a trust is most closely connected reference shall be made in particular to –

- (a) the place of administration of the trust designated by the settlor;
- (b) the situs of the assets of the trust;

- (c) the place of residence or business of the trustee;
- (d) the objects of the trust and the places where they are to be fulfilled.

Article 8

The law specified by Article 6 or 7 shall govern the validity of the trust, its construction, its effects, and the administration of the trust.

In particular that law shall govern –

- (a) the appointment, resignation and removal of trustees, the capacity to act as a trustee, and the devolution of the office of trustee;
- (b) the rights and duties of trustees among themselves;
- (c) the right of trustees to delegate in whole or in part the discharge of their duties or the exercise of their powers;
- (d) the power of trustees to administer or to dispose of trust assets, to create security interests in the trust assets, or to acquire new assets;
- (e) the powers of investment of trustees;
- (f) restrictions on the duration of the trust, and on the power to accumulate the income of the trust;
- (g) the relationships between the trustees and the beneficiaries including the personal liability of the trustees to the beneficiaries;
- (h) the variation or termination of the trust;
- (i) the distribution of the trust assets;
- (j) the duty of trustees to account for their administration.

Article 9

In applying this Chapter a severable aspect of the trust, particularly matters of administration, may be governed by a different law.

Article 10

The law applicable to the validity of the trust shall determine whether that law or the law governing a severable aspect of the trust may be replaced by another law.

CHAPTER III – RECOGNITION

Article 11

A trust created in accordance with the law specified by the preceding Chapter shall be recognized as a trust.

Such recognition shall imply as a minimum, that the trust property constitutes a separate fund, that the trustee may sue and be sued in his capacity as trustee, and that he may appear to act in this capacity before a notary or any person acting in an official capacity.

In so far as the law applicable to the trust requires or provides, such recognition shall imply, in particular –

- (a) that personal creditors of the trustee shall have no recourse against the trust assets;
- (b) that the trust assets shall not form part of the trustee's estate on his insolvency or bankruptcy;
- (c) that the trust assets shall not form part of the matrimonial property of the trustee or his spouse nor part of the trustee's estate on his death;
- (d) that the trust assets may be recovered when the trustee, in breach of trust, has mingled trust assets with his own property or has alienated trust assets. However, the rights and obligations of any third party holder of the assets shall remain subject to the law determined by the choice of law rules of the forum.

Article 12

Where the trustee desires to register assets, movable or immovable, or documents of title to them, he shall be entitled, in so far as this is not prohibited by or inconsistent with the law of the State where registration is sought, to do so in his capacity as trustee or in such other way that the existence of the trust is disclosed.

Article 13

No State shall be bound to recognize a trust the significant elements of which, except for the choice of the applicable law, the place of administration and the habitual residence of the trustee, are more closely connected with States which do not have the institution of the trust or the category of trust involved.

Article 14

The Convention shall not prevent the application of rules of law more favourable to the recognition of trusts.

CHAPTER IV – GENERAL CLAUSES

Article 15

The Convention does not prevent the application of provisions of the law designated by the conflicts rules of the forum, in so far as those provisions cannot be derogated from by voluntary act, relating in particular to the following matters –

- (a) the protection of minors and incapable parties;
- (b) the personal and proprietary effects of marriage;
- (c) succession rights, testate and intestate, especially the indefeasible shares of spouses and relatives;
- (d) the transfer of title to property and security interests in property;
- (e) the protection of creditors in matters of insolvency;
- (f) the protection, in other respects, of third parties acting in good faith.

If recognition of a trust is prevented by application of the preceding paragraph, the court shall try to give effect to the objects of the trust by other means.

Article 16

The Convention does not prevent the application of those provisions of the law of the forum which must be applied even to international situations, irrespective of rules of conflict of laws.

If another State has a sufficiently close connection with a case then, in exceptional circumstances, effect may also be given to rules of that State which have the same character as mentioned in the preceding paragraph. Any Contracting State may, by way of reservation, declare that it will not apply the second paragraph of this article.

Article 17

In the Convention the word “law” means the rules of law in force in a State other than its rules of conflict of laws.

Article 18

The provisions of the Convention may be disregarded when their application would be manifestly incompatible with public policy (ordre public).

Article 19

Nothing in the Convention shall prejudice the powers of States in fiscal matters.

Article 20

Any Contracting State may, at any time, declare that the provisions of the Convention will be extended to trusts declared by judicial decisions. This declaration shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands and will come into effect on the day when this notification is received.

Article 31 is applicable to the withdrawal of this declaration in the same way as it applies to a denunciation of the Convention.

Article 21

Any Contracting State may reserve the right to apply the provisions of Chapter III only to trusts the validity of which is governed by the law of a Contracting State.

Article 22

The Convention applies to trusts regardless of the date on which they were created.

However, a Contracting State may reserve the right not to apply the Convention to trusts created before the date on which, in relation to that State, the Convention enters into force.

Article 23

For the purposes of identifying the law applicable under the Convention, where a State comprises several territorial units each of which has its own rules of law in respect of trusts, any reference to the law of that State is to be construed as referring to the law in force in the territorial unit in question.

Article 24

A State within which different territorial units have their own rules of law in respect of trusts is not bound to apply the Convention to conflicts solely between the laws of such units.

Article 25

The Convention shall not affect any other international instrument containing provisions on matters governed by this Convention to which a Contracting State is, or becomes, a Party.

CHAPTER V – FINAL CLAUSES

Article 26

Any State may, at the time of signature, ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 29, make the reservations provided for in Articles 16, 21 and 22.

No other reservation shall be permitted.

Any Contracting State may at any time withdraw a reservation which it has made; the reservation shall cease to have effect on the first day of the third calendar month after notification of the withdrawal.

Article 27

The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Fifteenth Session.

It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 28

Any other State may accede to the Convention after it has entered into force in accordance with Article 30, paragraph 1.

The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

The accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the twelve months after the receipt of the notification referred to in Article 32. Such an objection may also be raised by Member States at the time when they ratify, accept or approve the Convention after an accession. Any such objection shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 29

If a State has two or more territorial units in which different systems of law are applicable, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all of its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

Any such declaration shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands and shall state expressly the territorial units to which the Convention applies.

If a State makes no declaration under this article, the Convention is to extend to all territorial units of that State.

Article 30

The Convention shall enter into force on the first day of the third calendar month after the deposit of the third instrument of ratification, acceptance or approval referred to in Article 27.

Thereafter the Convention shall enter into force –

(a) for each State ratifying, accepting or approving it subsequently, on the first day of the third calendar month after the deposit of its instrument of ratification, acceptance or approval;

(b) for each acceding State, on the first day of the third calendar month after the expiry of the period referred to in Article 28;

(c) for a territorial unit to which the Convention has been extended in conformity with Article 29, on the first day of the third calendar month after the notification referred to in that article.

Article 31

Any Contracting State may denounce this Convention by a formal notification in writing addressed to the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention.

The denunciation takes effect on the first day of the month following the expiration of six months after the notification is received by the depositary or on such later date as is specified in the notification.

Article 32

The Ministry of Foreign Affairs of the Kingdom of the Netherlands shall notify the States Members of the Conference and the States which have acceded in accordance with Article 28, of the following –

- (a) the signatures and ratifications, acceptances or approvals referred to in Article 27;
- (b) the date on which the Convention enters into force in accordance with Article 30;
- (c) the accessions and the objections raised to accessions referred to in Article 28;
- (d) the extensions referred to in Article 29;
- (e) the declarations referred to in Article 20;
- (f) the reservation or withdrawals referred to in Article 26;
- (g) the denunciations referred to in Article 31.

In witness whereof the undersigned, being duly authorized thereto, have signed this Convention.

Done at The Hague, on the.....day of....., 19, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Fifteenth Session.

CHAPTER I-20

An Act Respecting International Wills

Table of Contents

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

	Section
Short title.....	1
Interpretation.....	2
Convention in force in Province.....	3
Effect of rules set out in Annex.....	4
Effect on certain wills.....	5
Designation of persons authorized to act.....	6
Schedule	

Short title

1 This Act may be cited as the *International Wills Act*. 2000, c. 7, s. 1.

Interpretation

2 In this Act,

“Convention” means the convention providing a uniform law on the form of international will, a copy of which is set out in the Schedule to this Act;

“international will” means a will that has been made in accordance with the rules regarding an international will set out in the Annex to the Convention. 2000, c. 7, s. 2.

Convention in force in Province

3 On, from and after May 27, 2001, the Convention is in force in the Province and applies to wills as law of the Province. 2000, c. 7, s. 3.

Effect of rules set out in Annex

4 On, from and after May 27, 2001, the rules regarding an international will set out in the Annex to the Convention are law in the Province. 2000, c. 7, s. 4.

Effect on certain wills

5 Nothing in this Act detracts from or affects the validity of a will that is valid under the laws in force within the Province other than this Act. 2000, c. 7, s. 5.

Designation of persons authorized to act

6 All members of the Nova Scotia Barristers’ Society are designated as persons authorized to act in connection with international wills. 2000, c. 7, s. 6.

SCHEDULE

CONVENTION PROVIDING A UNIFORM LAW
ON THE FORM OF AN INTERNATIONAL WILL

The States signatory to the present Convention,

DESIRING to provide to a greater extent for the respecting of last wills by establishing an additional form of will hereinafter to be called an "international will" which, if employed, would dispense to some extent with the search for the applicable law;

HAVE RESOLVED to conclude a Convention for this purpose and have agreed upon the following provisions:

Article I

1. Each Contracting Party undertakes that not later than six months after the date of entry into force of this Convention in respect of that Party it shall introduce into its law the rules regarding an international will set out in the Annex to this Convention.
2. Each Contracting Party may introduce the provisions of the Annex into its law either by reproducing the actual text, or by translating it into its official language or languages.
3. Each Contracting Party may introduce into its law such further provisions as are necessary to give the provisions of the Annex full effect in its territory.
4. Each Contracting Party shall submit to the Depositary Government the text of the rules introduced into its national law in order to implement the provisions of this Convention.

Article II

1. Each Contracting Party shall implement the provisions of the Annex in its law, within the period provided for in the preceding article, by designating the persons who, in its territory, shall be authorized to act in connection with international wills. It may also designate as a person authorized to act with regard to its nationals its diplomatic or consular agents abroad insofar as the local law does not prohibit it.
2. The Party shall notify such designation, as well as any modifications thereof, to the Depositary Government.

Article III

The capacity of the authorized person to act in connection with an international will, if conferred in accordance with the law of a Contracting Party, shall be recognized in the territory of the other Contracting Parties.

Article IV

The effectiveness of the certificate provided for in Article 10 of the Annex shall be recognized in the territories of all Contracting Parties.

Article V

1. The conditions requisite to acting as a witness of an international will shall be governed by the law under which the authorized person was designated. The same rule shall apply as regards an interpreter who is called upon to act.
2. Nonetheless no one shall be disqualified to act as a witness of an international will solely because he is an alien.

Article VI

1. The signature of the testator, of the authorized person, and of the witnesses to an international will, whether on the will or on the certificate, shall be exempt from any legalization or like formality.
2. Nonetheless, the competent authorities of any Contracting Party may, if necessary, satisfy themselves as to the authenticity of the signature of the authorized person.

Article VII

The safekeeping of an international will shall be governed by the law under which the authorized person was designated.

Article VIII

No reservation shall be admitted to this Convention or to its Annex.

Article IX

1. The present Convention shall be open for signature at Washington from October 26, 1973, until December 31, 1974.
2. The Convention shall be subject to ratification.
3. Instruments of ratification shall be deposited with the Government of the United States of America, which shall be the Depositary Government.

Article X

1. The Convention shall be open indefinitely for accession.
2. Instruments of accession shall be deposited with the Depositary Government.

Article XI

1. The present Convention shall enter into force six months after the date of deposit of the fifth instrument of ratification or accession with the Depositary Government.
2. In the case of each State which ratifies this Convention or accedes to it after the fifth instrument of ratification or accession has been deposited, this Convention shall enter into force six months after the deposit of its own instrument of ratification or accession.

Article XII

1. Any Contracting Party may denounce this Convention by written notification to the Depositary Government.
2. Such denunciation shall take effect twelve months from the date on which the Depositary Government has received the notification, but such denunciation shall not affect the validity of any will made during the period that the Convention was in effect for the denouncing State.

Article XIII

1. Any State may, when it deposits its instrument of ratification or accession or at any time thereafter, declare, by a notice addressed to the Depositary Government, that this Convention shall apply to all or part of the territories for the international relations of which it is responsible.
2. Such declaration shall have effect six months after the date on which the Depositary Government shall have received notice thereof or, if at the end of such period the Convention has not yet come into force, from the date of its entry into force.
3. Each Contracting Party which has made a declaration in accordance with paragraph 1 of this Article may, in accordance with Article XII, denounce this Convention in relation to all or part of the territories concerned.

Article XIV

1. If a State has two or more territorial units in which different systems of law apply in relation to matters respecting the form of wills, it may at the time of signature, ratification, or accession, declare that this Convention shall extend to all its territorial units or only to one or more of them, and may modify its declaration by submitting another declaration at any time.
2. These declarations shall be notified to the Depositary Government and shall state expressly the territorial units to which the Convention applies.

Article XV

If a Contracting Party has two or more territorial units in which different systems of law apply in relation to matters respecting the form of wills, any reference to the internal law of the place where the will is made or to the law under which the authorized person has been appointed to act in connection with international wills shall be construed in accordance with the constitutional system of the Party concerned.

Article XVI

1. The original of the present Convention, in the English, French, Russian and Spanish languages, each version being equally authentic, shall be deposited with the Government of the United States of America, which shall transmit certified copies thereof to each of the signatory and acceding States and to the International Institute for the Unification of Private Law.
2. The Depositary Government shall give notice to the signatory and acceding States, and to the International Institute for the Unification of Private Law, of:

- (a) any signature;
- (b) the deposit of any instrument of ratification or accession;
- (c) any date on which this Convention enters into force in accordance with Article XI;
- (d) any communication received in accordance with Article I, paragraph 4;
- (e) any notice received in accordance with Article II, paragraph 2;
- (f) any declaration received in accordance with Article XIII, paragraph 2, and the date on which such declaration takes effect;
- (g) any denunciation received in accordance with Article XII, paragraph 1, or Article XIII, paragraph 3, and the date on which the denunciation takes effect;
- (h) any declaration received in accordance with Article XIV, paragraph 2, and the date on which the declaration takes effect.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, being duly authorized to that effect, have signed the present Convention.

DONE at Washington this twenty-sixth day of October, one thousand nine hundred and seventy-three.

ANNEX

UNIFORM LAW ON THE FORM OF AN INTERNATIONAL WILL

Article 1

1. A will shall be valid as regards form, irrespective particularly of the place where it is made, of the location of the assets and of the nationality, domicile or residence of the testator, if it is made in the form of an international will complying with the provisions set out in Articles 2 to 5 hereinafter.
2. The invalidity of the will as an international will shall not affect its formal validity as a will of another kind.

Article 2

This law shall not apply to the form of testamentary dispositions made by two or more persons in one instrument.

Article 3

1. The will shall be made in writing.
2. It need not be written by the testator himself.
3. It may be written in any language, by hand or by any other means.

Article 4

1. The testator shall declare in the presence of two witnesses and of a person authorized to act in connection with international wills that the document is his will and that he knows the contents thereof.
2. The testator need not inform the witnesses, or the authorized person, of the contents of the will.

Article 5

1. In the presence of the witnesses and of the authorized person, the testator shall sign the will or, if he has previously signed it, shall acknowledge his signature.
2. When the testator is unable to sign, he shall indicate the reason therefor to the authorized person who shall make note of this on the will. Moreover, the testator may be authorized by the law under which the authorized person was designated to direct another person to sign on his behalf.
3. The witnesses and the authorized person shall there and then attest the will by signing in the presence of the testator.

Article 6

1. The signatures shall be placed at the end of the will.
2. If the will consists of several sheets, each sheet shall be signed by the testator or, if he is unable to sign, by the person signing on his behalf or, if there is no such person, by the authorized person. In addition, each sheet shall be numbered.

Article 7

1. The date of the will shall be the date of its signature by the authorized person.
2. This date shall be noted at the end of the will by the authorized person.

Article 8

In the absence of any mandatory rule pertaining to the safekeeping of the will, the authorized person shall ask the testator whether he wishes to make a declaration concerning the safekeeping of his will. If so and at the express request of the testator the place where he intends to have his will kept shall be mentioned in the certificate provided for in Article 9.

Article 9

The authorized person shall attach to the will a certificate in the form prescribed in Article 10 establishing that the obligations of this law have been complied with.

Article 10

The certificate drawn up by the authorized person shall be in the following form or in a substantially similar form:

CERTIFICATE

(Convention of October 26, 1973)

1. I, (name, address and capacity), a person authorized to act in connection with international wills
 2. Certify that on (date) at (place)
 3. (testator) (name, address, date and place of birth) in my presence and that of the witnesses
 4. (a) (name, address, date and place of birth)
 (b) (name, address, date and place of birth)
 has declared that the attached document is his will and that he knows the contents thereof.
 5. I furthermore certify that:
 6. (a) in my presence and in that of the witnesses
 - (1) the testator has signed the will or has acknowledged his signature previously affixed.
 - * (2) following a declaration of the testator stating that he was unable to sign his will for the following reason
 I have mentioned this declaration on the will
 * the signature has been affixed by(name, address)
 7. (b) the witnesses and I have signed the will;
 8. * (c) each page of the will has been signed by and numbered;
 9. (d) I have satisfied myself as to the identity of the testator and of the witnesses as designated above;
 10. (e) the witnesses met the conditions requisite to act as such according to the law under which I am acting;
 11. * (f) the testator has requested me to include the following statement concerning the safekeeping of his will:
 12. PLACE
 13. DATE
 14. SIGNATURE and, if necessary, SEAL
- * To be completed if appropriate.

Article 11

The authorized person shall keep a copy of the certificate and deliver another to the testator.

Article 12

In the absence of evidence to the contrary, the certificate of the authorized person shall be conclusive of the formal validity of the instrument as a will under this Law.

Article 13

The absence or irregularity of a certificate shall not affect the formal validity of a will under this Law.

Article 14

The international will shall be subject to the ordinary rules of revocation of wills.

Article 15

In interpreting and applying the provisions of this law, regard shall be had to its international origin and to the need for uniformity in its interpretation.

2000, c. 7, Sch.

CHAPTER I-21

**An Act Respecting the Form
and Interpretation of Statutes**

Table of Contents

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

	Section
Short title.....	1
Form of Enacting Statutes	
Form and place of enacting clause.....	2
Promulgation	
Indorsement on and effective date of Act	3
Evidence of Act.....	4
Judicial notice	5
Rules of Construction	
Application of this Act and judicial rule of construction	6
Interpretation of words and names.....	7
Powers prior to commencement of enactment.....	8
Interpretation of words and generally	9
Public versus private Act.....	10
Preamble and interpretation provision	11
Header or appended citation	12
Meaning of expression in regulation or order.....	13
Binding of Crown.....	14
Powers and privileges of corporation.....	15
Form of proclamation.....	16
Term of office of public officer.....	17
Public officers and ministers of the Crown.....	18
Continuation of jurisdiction upon resignation, retirement, etc.	19
Implied provisions in enactment.....	20
Citation of Act.....	21
Reference in enactment.....	22
Repeal and Amendment	
Amendment and repeal of enactment.....	23
Effect of repeal or repeal and substitution	24
Repeal and substitution by amendment or revision	25
Effect of repeal, re-enactment, revision, consolidation or amendment	26
Miscellaneous	
Administration of oath	27
Manner of administration of oath.....	28
Recovery of penalty or forfeiture.....	29
Disposition of penalty	30
Place of imprisonment	31
Source of funds for municipal charge	32
Judicature Act.....	33
Application of Sections 52A to 52G of Trade Union Act	34
Effect of penalty on liability for damage	35
Liability to punishment for same offence	36
Bond by public officer	37

Powers of judge or officer of court..... 38
 Reference to Canadian Navy, Army or Air Force..... 39

Short title

1 This Act may be cited as the *Interpretation Act*. R.S., c. 235, s. 1.

FORM OF ENACTING STATUTES

Form and place of enacting clause

2 (1) The following style of words may be used to indicate the authority by virtue of which statutes of Nova Scotia are passed: “Be it enacted by the Governor and Assembly as follows”.

(2) After the insertion of those words, which must follow the preamble, if any, of the statute, the various provisions of the statute must follow in concise and enunciative form. R.S., c. 235, s. 2.

PROMULGATION

Indorsement on and effective date of Act

3 (1) The Clerk of the House of Assembly shall indorse on every Act of the Legislature, immediately after the title of the Act, the day, month and year when the Act was, by the Lieutenant Governor, assented to or reserved, and in the latter case the Clerk shall also indorse thereon the day, month and year when the Lieutenant Governor has signified, either by speech or message to the Legislature or by proclamation, that the Act was laid before the Governor General in Council and that the Governor General in Council was pleased to assent thereto.

(2) The indorsement must be taken to be a part of the Act, and the day of the assent or signification, as the case may be, is the date of the commencement of the Act, if no later commencement is therein provided.

(3) Where an enactment is expressed to come into force on a particular day or on a day fixed by proclamation or otherwise, it comes into force immediately on the expiration of the previous day and, where an enactment is expressed to expire, lapse or otherwise cease to have effect on a particular day, it ceases to have effect immediately on the commencement of the following day.

(4) Where an Act contains a provision that the Act or any portion thereof is to come into force on a day later than the date of assent, that provision is deemed to have come into force on the date of assent to the Act.

(5) Where an Act provides that certain provisions thereof are to come or is deemed to have come into force on a day other than the date of assent, the remaining provisions of the Act are deemed to have come into force on the date of assent to the Act.

(6) Where an Act or a part of an Act is expressed to come into force on a day to be fixed by proclamation, judicial notice must be taken of the issue of the proclamation and the day fixed thereby without being specially pleaded.

(7) Where an Act heretofore or hereafter enacted is expressed to come into force on a day to be fixed by proclamation, a proclamation may extend to the whole or any part or portion of the Act. R.S., c. 235, s. 3.

Evidence of Act

4 Printed copies of Acts published in the Royal Gazette, or purporting to be published by the Queen's Printer, are evidence of those Acts. R.S., c. 235, s. 4.

Judicial notice

5 Every Act must be judicially noticed by all judges, justices of the peace and others without being specially pleaded. R.S., c. 235, s. 5.

RULES OF CONSTRUCTION

Application of this Act and judicial rule of construction

6 (1) Except where a contrary intention appears, every provision of this Act applies to this Act and to every enactment made at the time, before or after this Act comes into force.

(2) Nothing in this Act excludes a judicial rule of construction that is applicable to an enactment and not inconsistent with this Act. R.S., c. 235, s. 6.

Interpretation of words and names

7 (1) In this Act and in any other enactment,

“Assembly” means the Legislative Assembly of the Province;

“bank” or “chartered bank” means a bank to which the *Bank Act* (Canada) applies, a credit union incorporated pursuant to the *Credit Union Act* or a trust or loan company that is authorized to carry on business by or pursuant to the *Trust and Loan Companies Act* and receive or accept deposits within the meaning of that Act, and includes a branch, agency or office of a bank, credit union or trust or loan company;

“the Crown”, “the King”, “the Queen”, “His Majesty” or “Her Majesty” means the Sovereign of Canada and His other realms and territories and Head of the Commonwealth;

“declaration”, “solemn declaration” or “statutory declaration” means a solemn declaration in the form and manner from time to time provided by the *Evidence Act* or by the *Canada Evidence Act*;

“duly qualified medical practitioner”, “legally qualified medical practitioner” or any other words or expressions importing legal recognition of a person as a medical practitioner or member of the medical profession means a person registered under the *Medical Act*;

“enactment” means an Act or a regulation or any portion of an Act or regulation and, as applied to a territory of Canada, includes an ordinance of the territory;

“folio” means 90 words;

“Governor General” or “Governor of Canada” means the Governor General of Canada, or other chief executive officer or administrator carrying on the Government of Canada on behalf and in the name of the Sovereign, by whatever title;

“Governor General in Council” means the Governor General acting by and with the advice of, by and with the advice and consent of or in conjunction with the King’s Privy Council for Canada;

“holiday” includes Sunday, New Year’s Day, the third Monday in February, Good Friday, Victoria Day, Canada Day, Labour Day, Remembrance Day, Christmas Day, the birthday or the day appointed for the celebration of the birth of the reigning Sovereign, and any day appointed by any statute in force in the Province or by proclamation of the Governor General or of the Lieutenant Governor as a general holiday or for general fast or thanksgiving, and whenever a holiday other than Remembrance Day falls on a Sunday the expression holiday includes the following day;

“issue”, as applied to the descent of an estate, includes all lawful lineal descendants of the ancestor;

“jail” means the common jail for a county, regional municipality, town or municipality of a county or district;

“justice” means a justice of the peace and includes a judge of the provincial court;

“land”, “lands”, “real estate” and “real property” include, respectively, lands, tenements, hereditaments and all rights thereto and interests therein;

“Legislature” means the Lieutenant Governor and the Assembly;

“Lieutenant Governor” or “Governor” means the Lieutenant Governor of the Province or the chief executive officer or administrator carrying on the Government of the Province on behalf and in the name of the Sovereign by whatever title;

“Lieutenant Governor in Council”, “Governor in Council” or “Government” means the Lieutenant Governor acting by and with the advice of the Executive Council of the Province;

“oath” or “affidavit”, in the case of persons for the time being allowed or required by law to affirm or declare instead of swearing, includes affirmation and declaration and “swear” in the like case includes “affirm” and “declare”;

“person” includes a corporation and the heirs, executors, administrators or other legal representatives of a person;

“Personal Property Registry” means the Personal Property Registry established by the *Personal Property Security Act*;

“proclamation” means a proclamation under the Great Seal of Nova Scotia;

“Province” means the Province of Nova Scotia;

“province”, when used in reference to a part of Canada other than Nova Scotia, includes a territory of Canada;

“public officer” includes a person in the public service of the Province;

“registered mail” includes certified mail, signature mail and a service provided by private couriers commonly known as signature service;

“repealed” includes revoked or cancelled, expired, lapsed or otherwise ceased to have effect;

“representatives” includes executors and administrators;

“Revised Statutes” means the Revised Statutes of Nova Scotia for the time being in force by virtue of a proclamation issued by the Governor in Council acting under authority of a statute of the Province;

“will” includes a codicil;

“writing”, “written” or any term of like import includes words printed, painted, engraved, lithographed, photographed, or represented or reproduced by any mode of representing or reproducing words in a visible form.

(2) In an enactment, a name commonly applied to a country, place, body, corporation, society, officer, functionary, person, party or thing means the country, place, body, corporation, society, officer, functionary, person, party or thing to which the name is commonly applied although the name is not the formal or extended designation.

(3) In this Act and every enactment made at the time, before or after this subsection comes into force, “regulation” includes any rule, rule of court, order prescribing regulations, tariff of costs or fees, form, bylaw, resolution or order made in the execution of a power given by an enactment except if the definition of “regulation” as defined by the *Regulations Act* applies or if a contrary intention appears from the enactment.

(4) Where, in this Act and every enactment made at the time, before or after the coming into force of this subsection, there is a reference to any interest in personal property to secure the payment or performance of an obligation, including a charge, lien, mortgage or pledge, that reference, unless the context otherwise requires, includes a security interest as defined in the *Personal Property Security Act*. R.S., c. 235, s. 7; 1990, c. 31, s. 1; 1995-96, c. 21; 1995-96, c. 13, s. 81; 2013, c. 35, s. 3.

Powers prior to commencement of enactment

8 Where an enactment is not to come into force or operation immediately on its being passed and it confers power to

- (a) make appointments;
- (b) make regulations;
- (c) hold elections;
- (d) make, grant or issue instruments;

- (e) give notices;
- (f) prescribe forms; or
- (g) do any other thing,

that power may, for the purpose of making the enactment effective upon its coming into force, be exercised at any time after the enactment has been passed, but a regulation made thereunder before the enactment comes into force has no effect until the enactment comes into force, except in so far as is necessary to make the enactment effective. R.S., c. 235, s. 8.

Interpretation of words and generally

9 (1) The law is considered as always speaking and, whenever any matter or thing is expressed in the present tense, it must be applied to the circumstances as they arise, so that effect may be given to each enactment, and every part thereof, according to its spirit, true intent and meaning.

(2) “Now”, “next”, “heretofore” or “hereafter” in an enactment refer to the time when the enactment comes into force.

(3) In an enactment, “shall” is imperative and “may” is permissive.

(4) “Herein” used in a Section or provision of an enactment relates to the whole enactment and not to that Section or provision only.

(5) Every enactment is deemed remedial and interpreted to insure the attainment of its objects by considering among other matters

- (a) the occasion and necessity for the enactment;
- (b) the circumstances existing at the time it was passed;
- (c) the mischief to be remedied;
- (d) the object to be attained;
- (e) the former law, including other enactments upon the same or similar subjects;
- (f) the consequences of a particular interpretation; and
- (g) the history of legislation on the subject.

(6) Where in an enactment the Sovereign is referred to or a person, body, office, officer, place, property, article or thing is described or qualified by words descriptive of the Sovereign, the reference or words is to be read as if written in the masculine gender when the Sovereign is male and as if written in the female gender when the Sovereign is female. R.S., c. 235, s. 9.

Public versus private Act

10 Every Act is a public Act unless by express provision it is declared to be a private Act. R.S., c. 235, s. 10.

Preamble and interpretation provision

11 (1) The preamble is to be read as part of an enactment to assist in explaining its purport and object.

(2) An interpretation or definition section or provision contained in an enactment applies to the whole enactment unless

(a) a different intention is expressed; or

(b) the meaning of the interpretation or definition section or provision is inconsistent with the context or purpose of the enactment. R.S., c. 235, s. 11.

Header or appended citation

12 Marginal notes or headers and appended citations of former enactments form no part of the enactment but are deemed to have been inserted for convenience of reference only. R.S., c. 235, s. 12.

Meaning of expression in regulation or order

13 Except when a contrary intention appears, where an enactment confers power to make regulations or to grant, make or issue an order, writ, warrant, scheme or letters patent, expressions used therein have the same respective meanings as in the enactment conferring the power. R.S., c. 235, s. 13.

Binding of Crown

14 No enactment is binding on the Crown or affects the Crown or the Crown's rights or prerogatives in any manner unless it is expressly stated therein that the Crown is bound thereby. R.S., c. 235, s. 14.

Powers and privileges of corporation

15 Words in an enactment establishing or providing for establishing a corporation

(a) vest in the corporation power to sue and be sued, to contract and be contracted with by its corporate name, to have a common seal and to alter or change it at pleasure, to have perpetual succession, to acquire and hold personal property or movables for the purposes for which the corporation is constituted and to alienate the same at pleasure;

(b) vest in a majority of the members of the corporation the power to bind the others by their acts; and

(c) exempt from personal liability for its debts, obligations or acts such individual members of the corporation as do not contravene the provisions of the enactment incorporating them. R.S., c. 235, s. 15.

Form of proclamation

16 Where the Governor is authorized to do an act by proclamation, it is to be understood that the proclamation is a proclamation issued under an order of the Governor in Council, but it is not necessary to mention in the proclamation that it is issued under the order. R.S., c. 235, s. 16.

Term of office of public officer

17 A public officer, appointed before or after this Act comes into force under authority of an enactment or otherwise, holds office during pleasure only, except when otherwise expressed in the enactment or in the public officer's commission or appointment. R.S., c. 235, s. 17.

Public officers and ministers of the Crown

18 (1) Words authorizing the appointment of a public officer include the power of

- (a) removing or suspending the public officer;
- (b) reappointing or reinstating the public officer;
- (c) appointing another in the public officer's stead or to act in the public officer's stead; and
- (d) fixing the public officer's remuneration and varying or terminating it, in the discretion of the authority in whom power of appointment is vested.

(2) Words directing or empowering a public officer to do any act or thing, or otherwise applying to the public officer by the public officer's name of office, include the public officer's successors in the office and deputy.

(3) Words directing or empowering a minister of the Crown to do an act or thing, or otherwise applying to the minister by the minister's name of office, include a minister acting for the minister or, where the office is vacant, a minister designated to act in the office by or under the authority of an order in council, and also the minister's successors in the office and the minister or the minister's deputy.

(4) Where a power is conferred or a duty imposed on the holder of an office as such, the power may be exercised and the duty shall be performed by the person for the time being charged with the execution of the powers and duties of the office. R.S., c. 235, s. 18; revision corrected.

Continuation of jurisdiction upon resignation, retirement, etc.

19 (1) For the purpose of this Section, the Governor in Council may designate a board, tribunal, commission or other body that has adjudicative powers.

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

(3) Where a member of a body designated by the Governor in Council pursuant to this Section resigns office or retires or the member's term of office expires or is terminated, the member, during such period of time as the Governor in Council orders, has and shall exercise the jurisdiction of a member in respect of any application, appeal, proceedings, matter or thing heard before the member or commenced by the member as a member of that body, including the power to complete any unfinished matter and give a decision in that matter as if the member had not so resigned or retired or the member's term of office had not expired or been terminated.

(4) For greater certainty, nothing in subsection (3) precludes the appointment of a new member to fill a vacancy created by such resignation, retirement, expiry or termination and such appointment does not affect the operation of subsection (3).

(5) A designation by the Governor in Council pursuant to subsection (1) or an order by the Governor in Council pursuant to subsection (3) may be made before or after such resignation, retirement, expiry or termination, and may be retroactive in effect. 2003, c. 7, s. 2.

Implied provisions in enactment

20 In an enactment,

(a) where anything is directed to be done by or before a public officer, it must be done by or before one whose jurisdiction or power extends to the place where such thing is to be done;

(b) where power is given to the Governor in Council or a public officer to do or enforce the doing of any act, all necessary powers are also given to enable the Governor in Council or public officer, as the case may be, to do or enforce the doing of the act;

(c) where the doing of an act that is expressly authorized is dependent upon the doing of any other act by the Governor in Council or by a public officer, the Governor in Council or public officer, as the case may be, has the power to do that other act;

(d) where any act is required or permitted to be done by more than two persons, a majority of them may do it;

(e) where a power is conferred or a duty imposed, the power may be exercised and the duty shall be performed, from time to time, as occasion requires;

(f) where power is conferred to make regulations, the power includes power, exercisable in like manner and subject to like consent and conditions, if any, to rescind, revoke, amend or vary the regulations and make others;

(g) where a form is prescribed, deviations therefrom not affecting the substance or calculated to mislead do not invalidate the form used;

(h) words importing male persons include female persons and corporations;

(i) words in the singular include the plural, and words in the plural include the singular;

(j) where a word is defined, the definition applies to other parts of speech and tenses of that word;

(k) where the time limited for the doing of any act expires or falls upon a Saturday or a holiday, the time so limited extends to and the act may be done on the first following day that is not a Saturday or a holiday;

(l) where a period of time dating from a given day, act or event is prescribed or allowed for any purpose, the time must be reckoned exclusively of that day or of the day of the act or event;

(m) where an oath is required or provided for, the person to be sworn may substitute for the oath a solemn affirmation in the same form as the oath with the necessary changes. R.S., c. 235, s. 19; 2002, c. 10, s. 4.

Citation of Act

21 (1) In an enactment or document, an Act of Nova Scotia or any other province of Canada or of Canada may be cited by reference to its title or its short title, if any, either with or without reference to the chapter, or by reference to the number of the chapter of the revised statutes or revised ordinances or of the statutes or ordinances for the year of Our Lord or the regnal year in which the Act was passed.

(2) A citation of or reference to an Act of Nova Scotia or any other province of Canada or of Canada is deemed to be a citation of or a reference to the Act as amended. R.S., c. 235, s. 20.

Reference in enactment

22 (1) A reference in an enactment by number or letter to two or more Parts, divisions, Sections, subsections, clauses, subclauses, paragraphs, subparagraphs, schedules or forms in an enactment includes the number or letter first mentioned and the number or letter last mentioned.

(2) A reference in an enactment to a Part, division, Section, schedule or form, except when a contrary intention appears, is a reference to a Part, division, Section, schedule or form of the enactment in which the reference occurs.

(3) A reference in an enactment to a subsection, clause, subclause, paragraph or subparagraph, except when a contrary intention appears, is a reference to a subsection, clause, subclause, paragraph or subparagraph, of the Section, subsection, clause, subclause, paragraph or subparagraph, as the case may be, in which the reference occurs.

(4) A reference in an enactment to regulations, except when a contrary intention appears, is a reference to regulations made under the enactment in which the reference occurs.

(5) A reference in an enactment by number or letter to any Section, subsection, clause, subclause, paragraph, subparagraph, or other division or line of another enactment is a reference to the Section, subsection, clause, subclause, paragraph, subparagraph, or other division or line of such other enactment as printed by authority of law. R.S., c. 235, s. 21.

REPEAL AND AMENDMENT

Amendment and repeal of enactment

23 (1) An enactment reserves to the Legislature the power of repealing or amending it and revoking, restricting or modifying a power, privilege or advantage by it vested in or granted to a person.

(2) An enactment may be amended or repealed by an enactment passed in the same session.

(3) An amending enactment, so far as consistent with its tenor, is part of the enactment that it amends. R.S., c. 235, s. 22.

Effect of repeal or repeal and substitution

24 (1) Where an enactment is repealed, the repeal does not

(a) revive any enactment or provision of law that was repealed by the enactment or prevent the effect of any saving clause contained in the enactment;

(b) affect the previous operation of the enactment so repealed or anything duly done or suffered under it;

(c) affect a right, privilege, obligation or liability acquired, accrued, accruing or incurred under the enactment;

(d) affect an offence committed against or a violation of the provisions of the enactment, or any penalty, forfeiture or punishment incurred under the enactment; or

(e) affect an investigation, legal proceeding or remedy concerning any right, privilege, obligation, liability, penalty, forfeiture or punishment acquired or incurred under the enactment.

(2) An investigation, legal proceeding or remedy, of the kind described in clause (1)(e), may be begun, continued or enforced as if the enactment had not been repealed.

(3) Where an enactment is repealed and other provisions are substituted for it,

(a) every person acting under the enactment shall continue to act as if appointed under the provisions so substituted until another is appointed in the person's stead;

(b) every bond and security given by a person appointed under the enactment remains in force, and all offices, books, papers and things made or used under the enactment must continue to be used as before the repeal as far as consistent with the substituted provisions;

(c) every proceeding taken under the enactment must be taken up and continued under and in conformity with the provisions so substituted, as far as consistently may be;

(d) in the recovery or enforcement of penalties and forfeitures incurred and in the enforcement of rights, existing or accruing under the enactment or in a proceeding in relation to matters that have happened before the repeal, the procedure established by the substituted provisions must be followed as far as it can be adapted thereto; and

(e) when any penalty, forfeiture or punishment is reduced or mitigated by any of the provisions so substituted, the penalty, forfeiture or punishment if imposed or adjudged after the repeal must be reduced or mitigated accordingly. R.S., c. 235, s. 23.

Repeal and substitution by amendment or revision

25 (1) Where an enactment is repealed and other provisions are substituted by way of amendment, revision or consolidation,

(a) all regulations made under the repealed enactment remain in force, in so far as they are not inconsistent with the substituted enactment, until they are annulled or others made in their stead; and

(b) a reference, in an unrepealed enactment to the repealed enactment, is to be, as regards a subsequent transaction, matter or thing, read as a reference to the provisions of the substituted enactment relating to the same subject-matter as the repealed enactment, but where there are no provisions in the substituted enactment relating to the same subject-matter, the repealed enactment is to be read as unrepealed as far as is necessary to maintain or give effect to the unrepealed enactment.

(2) Where an enactment of any other province of Canada or of Canada is repealed and other provisions are substituted by way of amendment, revision or consolidation, a reference in an enactment of Nova Scotia to the repealed enactment is, as regards a subsequent transaction, matter or thing, a reference to the provisions of the substituted enactment relating to the same subject-matter as the repealed enactment. R.S., c. 235, s. 24.

Effect of repeal, re-enactment, revision, consolidation or amendment

26 (1) Repeal of an enactment is not a declaration that the enactment was, or was considered by the Legislature or other body or person by whom the enactment was passed or made to have been, previously in force.

(2) A re-enactment, revision, consolidation or amendment of an enactment is not to be construed as an adoption of the construction that has by judicial decision or otherwise been placed upon the language used in the enactment or upon similar language. R.S., c. 235, s. 25.

MISCELLANEOUS

Administration of oath

27 Where by any enactment or by any rule of the Legislature, or by any order, regulation or commission made or issued by the Governor in Council under any law authorizing the Governor in Council to require the taking of evidence under oath, an oath is authorized or directed to be made, taken or administered, such oath may be administered, and a certificate of its having been made, taken or administered may be given, by anyone named in the enactment, rule, order, regulation or commission or by a judge of any court, a notary public, a commissioner for taking affidavits or a justice of the peace having jurisdiction or authority in the place in which the oath is administered. R.S., c. 235, s. 26.

Manner of administration of oath

28 Where an oath may be lawfully taken it may be administered to any person while such person holds in the person's hand a copy of the Old or New Testament without requiring the person to kiss the same or, when the person objects to being sworn in this manner or declares that the oath so administered is not bind-

ing upon the person's conscience, then in such manner and form and with such ceremonies as the person may declare to be binding. R.S., c. 235, s. 27.

Recovery of penalty or forfeiture

29 (1) Where a pecuniary penalty or a forfeiture is imposed for contravention of any enactment, then, where no other mode is prescribed for its recovery and it cannot be recovered upon summary conviction, the penalty or forfeiture is recoverable with costs by civil action or proceeding at the suit of the Crown only, or of a private party suing as well for the Crown as for the private party, before a court having jurisdiction to the amount of the penalty in cases of simple contract.

(2) Where no other provision is made for the appropriation of the penalty or forfeiture, one half thereof belongs to the Crown, and the other half belongs to the private plaintiff, if there is any, and where there is none the whole belongs to the Crown. R.S., c. 235, s. 28.

Disposition of penalty

30 Any penalty or sum of money, or the proceeds of any forfeiture that is by any enactment given to the Province, must, where no other provision is made respecting it, be paid into the General Revenue Fund, and be accounted for and otherwise dealt with accordingly. R.S., c. 235, s. 29.

Place of imprisonment

31 Where in any enactment, a person is directed to be imprisoned or committed to prison, the imprisonment or committal must, where no other place is mentioned or provided by law, be in or to the common jail of the locality in which the order for the imprisonment or committal is made or, where there is no common jail there, then in or to that common jail that is nearest to such locality, and the keeper of any such common jail shall receive such person and safely keep and detain the person in the common jail under the keeper's custody until discharged in due course of law or bailed in cases in which bail may by law be taken. R.S., c. 235, s. 30.

Source of funds for municipal charge

32 Where it is declared that any matter is to form a municipal charge, it must be rated, levied and collected with and by the same means as are by law directed with respect to other money for municipal purposes. R.S., c. 235, s. 31.

Judicature Act

33 Unless a contrary intention appears, the interpretation Section of the *Judicature Act*, so far as the terms defined can be applied, extends to all matters relating to legal matters. R.S., c. 235, s. 32.

Application of Sections 75 to 82 of Trade Union Act

34 Sections 75 to 82 of the *Trade Union Act* apply to collective bargaining between a police bargaining unit as defined by Section 75 of that Act and an employer on and after March 17, 2005, whether the collective bargaining commenced before, on or after that day. 2005, c. 34, s. 1.

Effect of penalty on liability for damage

35 The imposition of a penalty does not relieve a person from liability to answer for special damages to the person injured. R.S., c. 235, s. 33.

Liability to punishment for same offence

36 Where an act or omission constitutes an offence under two or more enactments, or an offence both under an enactment and at common law, the offender, unless the contrary intention appears, is liable to be prosecuted and punished under either or any of the enactments or at common law, but is not liable to be punished twice for the same offence. R.S., c. 235, s. 34.

Bond by public officer

37 (1) Where bonds are required to be given by a public officer, whether appointed under the provisions of an enactment by the Governor in Council or otherwise, they must be taken in the Crown's name when not otherwise directed.

(2) Sureties to any such bond may at any time give to the Attorney General notice of their desire to withdraw from liability thereunder, and in such case the liability of the sureties does not extend to any act done or matter omitted more than three months after the receipt of the notice.

(3) Upon the receipt of any such notice, the principal must be required to furnish new security in the same manner as if bonds had not been previously executed. R.S., c. 235, s. 35.

Powers of judge or officer of court

38 Where, by any enactment enacted either before or after the enactment of this Section, judicial or quasi-judicial powers are given to a judge or officer of a court, the judge or officer is, in the absence of express provision to the contrary, deemed to exercise such powers in the judge's or officer's official capacity and as representing the court to which the judge or officer is attached, and, for the purpose of performing the duties imposed upon the judge or officer by the enactment, subject to the provisions thereof, may exercise the powers the judge or officer possesses as a judge or an officer of that court. R.S., c. 235, s. 36.

Reference to Canadian Navy, Army or Air Force

39 Where in any enactment or in any will, deed, lease, contract or other document there is a reference to the Canadian Armed Forces, to the Canadian or Royal Canadian Navy, Army or Air Force or to the Naval, Army or Air Forces of Canada, or to a commissioned officer or member thereof or any similar reference, the reference is to be construed as including a reference to the Canadian Forces or a commissioned officer or member thereof, as the case may be. R.S., c. 235, s. 37.

CHAPTER I-22

**An Act Respecting
the Interprovincial Enforcement of Subpoenas**

Table of Contents

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

	Section
Short title.....	1
Interpretation.....	2
Exception from application.....	3
Out-of-Province subpoenas.....	4
Condition for reciprocity.....	5
Contempt of court.....	6
Out-of-Province service of subpoenas.....	7
Immunity for out-of-Province witnesses.....	8
Additional witness fees and expenses.....	9
Regulations.....	10
Schedule	

Short title

1 This Act may be cited as the *Interprovincial Subpoena Act*. 1996, c. 1, s. 1.

Interpretation

2 In this Act,

“court” means any court in a province of Canada and, where a board, commission, tribunal or other body or person in a province of Canada has the power to issue a subpoena, includes that board, commission, tribunal, body or person;

“subpoena” means a subpoena, summons or other document issued by a court requiring a person within a province other than the province of the issuing court to attend as a witness to produce documents or other things or to testify. 1996, c. 1, s. 2; 1999 (2nd Sess.), c. 8, s. 6.

Exception from application

3 This Act does not apply to a subpoena that is issued with respect to a criminal offence under an Act of the Parliament of Canada. 1996, c. 1, s. 3.

Out-of-Province subpoenas

4 (1) The Supreme Court of Nova Scotia shall receive and adopt as an order of the Court a subpoena from a court outside the Province if

(a) the subpoena is accompanied by a certificate signed by a judge of a superior court of the issuing province and impressed with the seal of that court, signifying that, upon hearing and examining the

applicant, the judge is satisfied that the attendance in the issuing province of the person subpoenaed

- (i) is necessary for the due adjudication of the proceeding in which the subpoena is issued, and
 - (ii) in relation to the nature and importance of the cause or proceeding is reasonable and essential to the due administration of justice in that province; and
- (b) the subpoena is accompanied by the witness fees and travelling expenses in accordance with the regulations.

(2) The certificate to which reference is made in clause (1)(a) may be in like effect to the form set out in the Schedule to this Act. 1996, c. 1, s. 4.

Condition for reciprocity

5 The Supreme Court of Nova Scotia shall not receive a subpoena from another province under Section 4 unless the law of that other province has a provision similar to Section 8 providing absolute immunity to a resident of the Province who is required to attend as a witness in the other province from all proceedings of the nature set out in Section 8 and within the jurisdiction of the legislature of that other province except only those proceedings grounded on events occurring during or after the required attendance of the person in the other province. 1996, c. 1, s. 5.

Contempt of court

6 Where a person who has been served with a subpoena adopted under Section 4 and given the witness fees and travelling expenses in accordance with the regulations not fewer than 10 days, or such shorter period as the judge of the court in the issuing province may indicate in the judge's certificate, before the date the person is required to attend in answer to the subpoena, fails without lawful excuse to comply with the order, that person is in contempt of court and subject to such penalty as the Supreme Court of Nova Scotia may impose. 1996, c. 1, s. 6.

Out-of-Province service of subpoenas

7 (1) Where a party to a proceeding in any court in the Province causes a subpoena to be issued for service in another province of Canada, the party may attend upon a judge of the Supreme Court of Nova Scotia, who shall hear and examine the party or party's counsel, if any, and, upon being satisfied that the attendance in the Province of the person required in the Province as a witness

- (a) is necessary for the due adjudication of the proceeding in which the subpoena or other document has been issued; and
- (b) in relation to the nature and importance of the proceedings, is reasonable and essential to the due administration of justice in the Province,

shall sign a certificate, which may be in the form set out in the Schedule to this Act, and shall cause the certificate to be impressed with the seal of the Supreme Court.

(2) In subsection (1), "party" includes the court or a member or official of the court.

(3) The certificate must be either attached to or endorsed on the subpoena. 1996, c. 1, s. 7.

Immunity for out-of-Province witnesses

8 A person required to attend before a court in the Province by a subpoena adopted by a court outside the Province is deemed, while within the Province in answer to the subpoena, not to have submitted to the jurisdiction of the courts of the Province other than as a witness in the proceedings in which that person is subpoenaed and is absolutely immune from seizure of goods, service of process, execution of judgment, garnishment, imprisonment or molestation of any kind relating to a legal or judicial right, cause, action, proceeding or process within the jurisdiction of the Legislature except only those proceedings grounded on events occurring during or after the required attendance of the person in the Province. 1996, c. 1, s. 8.

Additional witness fees and expenses

9 Where a person is required to attend before a court in the Province by a subpoena adopted by a court outside the Province, that person may request the court in the Province to order additional fees and expenses to be paid in respect of that person's attendance as a witness and the court, if it is satisfied that the amount of fees and expenses previously paid to the person in respect of that person's attendance is insufficient, may order the party who obtained the subpoena to pay the person forthwith such additional fees and expenses as the court considers sufficient, and amounts paid pursuant to an order made under this Section are disbursements in the cause. 1996, c. 1, s. 9.

Regulations

10 (1) The Governor in Council may make regulations

- (a) designating a board, commission, tribunal or other body of the Province or another province of Canada as a court for the purpose of this Act;
- (b) prescribing the witness fees and travelling expenses to be paid pursuant to this Act;
- (c) defining any word or expression used in this Act and 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*. 1996, c. 1, s. 10.

SCHEDULE

Certificate

I, (name of judge) a judge of the (name of court) have heard and examined (name of applicant party or party's counsel) who seeks to compel the attendance of (name of witness) to produce documents or other articles or to testify, or both, in a proceeding in the

Province of Nova Scotia in the (*name of court in which witness is to appear*) styled (*style of proceeding*).

I further certify that I am persuaded that the appearance of (*name of witness*) as a witness in the proceeding is necessary for the due adjudication of the proceeding, and, in relation to the nature and importance of cause or proceeding, is reasonable and essential to the due administration of justice in the Province of Nova Scotia.

The *Interprovincial Subpoena Act* (Nova Scotia) makes the following provision for the immunity of (*name of witness*):

A person required to attend before a court in the Province of Nova Scotia by a subpoena adopted by a court outside the Province of Nova Scotia is deemed, while within the Province of Nova Scotia in answer to the subpoena, not to have submitted to the jurisdiction of the courts of the Province of Nova Scotia other than as a witness in the proceedings in which the person is subpoenaed and is absolutely immune from seizure of goods, service of process, execution of judgment, garnishment, imprisonment or molestation of any kind relating to a legal or judicial right, cause, action, proceeding or process within the jurisdiction of the Legislature of the Province of Nova Scotia except only those proceedings grounded on events occurring during or after the required attendance of the person in the Province of Nova Scotia.

Dated this day of 20

(*seal of the court*)

.....
(*signature of judge*)

1996, c. 1, Sch.



CHAPTER I-23

**An Act to Make Uniform the Law
Respecting the Distribution
of Estates of Intestates**

Table of Contents

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

	Section
Short title.....	1
Interpretation.....	2
Application of Act.....	3
Surviving spouse.....	4
Surviving spouse but no issue.....	5
Regulations respecting election by surviving spouse	6
No surviving spouse or issue	7
No surviving spouse, issue or parent	8
Distribution to niece and nephew.....	9
Distribution to next of kin.....	10
Computation of degrees of kindred.....	11
Child en ventre sa mère.....	12
Advancement	13
Estate not disposed of by will and lands held in trust.....	14
Illegitimate child.....	15
Adultery	16

Short title

- 1** This Act may be cited as the *Intestate Succession Act*. R.S., c. 236, s. 1.

Interpretation

- 2** In this Act,
“estate” includes both real and personal property;
“issue” includes all lawful lineal descendants of the ancestor;
“net value” means the value of the estate, wherever situate, both within and outside the Province, after payment of the charges thereon and the debts, funeral expenses, expenses of administration, succession duty and estate tax. R.S., c. 236, s. 2.

Application of Act

- 3 (1)** This Act applies only in cases of death on or after September 1, 1966.

(2) Chapter 69 of the Revised Statutes, 1954, the *Descent of Property Act*, does not apply to cases of death on or after September 1, 1966. R.S., c. 236, s. 3.

Surviving spouse

4 (1) Where an intestate dies leaving a surviving spouse and issue, the intestate's estate, if the net value does not exceed \$50,000, goes to the surviving spouse.

(2) Where the net value of the estate exceeds \$50,000, the surviving spouse is entitled to \$50,000 and has a charge upon the estate for that sum with accrued interest from the date of the death of the intestate.

(3) In this Section, "home" means a dwelling owned and occupied as the principal residence by the intestate at the date of death of the intestate and includes any land appurtenant thereto and all household goods and furnishings of the dwelling.

(4) In this Section, the value of the home is the fair market value less any charges attaching thereto.

(5) Where the surviving spouse is entitled to \$50,000 pursuant to subsection (2), the surviving spouse may elect to receive the home

(a) in lieu of the said \$50,000 if the value of the home is in excess of \$50,000; or

(b) as part of the said \$50,000 if the value of the home does not exceed \$50,000.

(6) The residue of the estate must be divided among the surviving spouse and children in the following manner:

(a) where the intestate dies leaving a surviving spouse and one child, one half goes to the surviving spouse;

(b) where the intestate dies leaving a surviving spouse and more than one child, one third goes to the surviving spouse.

(7) Where a child has died leaving issue and the issue is alive at the date of the intestate's death, the surviving spouse takes the same share of the estate as if the child had been living at that date.

(8) Where an intestate dies leaving issue, the intestate's estate must be distributed, subject to the right of the surviving spouse, if any, *per stirpes* among the issue. R.S., c. 236, s. 4.

Surviving spouse but no issue

5 Where an intestate dies leaving a surviving spouse but no issue, the intestate's estate goes to the surviving spouse. R.S., c. 236, s. 5.

Regulations respecting election by surviving spouse

6 (1) The Attorney General may by regulation prescribe the requirements of an election by the surviving spouse pursuant to subsection 4(5) and determine what forms or documentation are required to evidence such election and the requirements of recording such election in any court of probate or registry of deeds.

(2) The exercise by the Attorney General of the power conferred by subsection (1) is a regulation within the meaning of the *Regulations Act*. R.S., c. 236, s. 6.

No surviving spouse or issue

7 Where an intestate dies leaving no surviving spouse or issue, the intestate's estate goes to the intestate's father and mother in equal shares if both are living, but, where either of them is dead, the estate goes to the survivor. R.S., c. 236, s. 7.

No surviving spouse, issue or parent

8 Where an intestate dies leaving no surviving spouse, issue, father or mother, the intestate's estate goes to the intestate's siblings in equal shares, and where any sibling is dead, the children of the deceased sibling take the share their parent would have taken if living. R.S., c. 236, s. 8.

Distribution to niece and nephew

9 Where an intestate dies leaving no surviving spouse, issue, father, mother, sibling, the intestate's estate goes to the intestate's nephews and nieces in equal shares and in no case is representation admitted. R.S., c. 236, s. 9.

Distribution to next of kin

10 Where an intestate dies leaving no surviving spouse, issue, father, mother, sibling, nephew or niece, the intestate's estate goes in equal shares to the next of kin of equal degree of consanguinity to the intestate and in no case is representation admitted. R.S., c. 236, s. 10.

Computation of degrees of kindred

11 For the purposes of this Act, degrees of kindred are computed by counting upward from the intestate to the nearest common ancestor and then downward to the relative and the kindred of the half-blood inherit equally with those of the whole-blood in the same degree. R.S., c. 236, s. 11.

Child en ventre sa mère

12 Descendants and relatives of the intestate, begotten before the intestate's death but born thereafter, inherit as if they had been born in the lifetime of the intestate and had survived the intestate. R.S., c. 236, s. 12.

Advancement

13 (1) Where a child or grandchild of a person who has died wholly intestate has been advanced by the intestate by portion, the portion must be reckoned, for the purposes of this Section only, as part of the estate of the intestate distributable according to law and

(a) where the advancement is equal to or greater than the share of the estate that the child or grandchild would be entitled to receive as above reckoned, the child or grandchild and their descendants are excluded from any share in the estate; but

(b) where the advancement is not equal to such share, the child or grandchild and their descendants are entitled to receive so

much only of the estate of the intestate as is sufficient to make all the shares of the children in the estate and advancement equal as nearly as can be estimated.

(2) The value of any portion advanced is deemed to be that which has been expressed by the intestate or acknowledged by the child or grandchild in writing, otherwise the value is the value of the portion when advanced.

(3) The onus of proving that a child or grandchild has been maintained or educated, or has been given money, with a view to a portion, is upon the person so asserting, unless the advancement has been expressed by the intestate or acknowledged by the child or grandchild in writing. R.S., c. 236, s. 13.

Estate not disposed of by will and lands held in trust

14 (1) All such estate as is not disposed of by will must be distributed as if the testator had died intestate and had left no other estate.

(2) The interest of any person in lands held in trust for the person in fee simple descends and is chargeable with the person's debts in like manner as if the person had died seised thereof. R.S., c. 236, s. 14.

Illegitimate child

15 For the purposes of this Act, an illegitimate child is treated as if the child were the legitimate child of the child's mother or father. R.S., c. 236, s. 16; 1999 (2nd Sess.), c. 8, s. 7.

Adultery

16 (1) Where a wife has left her husband and is living in adultery at the time of his death, she takes no part of her husband's estate under this Act.

(2) Where a husband has left his wife and is living in adultery at the time of her death, he takes no part of his wife's estate under this Act. R.S., c. 236, s. 17.

CHAPTER I-24

**An Act Respecting
the Unauthorized Distribution of Intimate Images
and Protection Against Cyber-bullying**

Table of Contents

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

	Section
Short title.....	1
Purpose of Act.....	2
Interpretation.....	3
Expectation of privacy not lost	4
Application to Court.....	5
Order	6
Defences.....	7
Publication ban for minors.....	8
Publication ban where intimate image distributed.....	9
Additional right of action or remedy not barred	10
Offence.....	11
Role of agency	12
No action lies	13
Regulations.....	14

Short title

1 This Act may be cited as the *Intimate Images and Cyber-protection Act*. 2017, c. 7, s. 1.

Purpose of Act

- 2** The purpose of this Act is to
- (a) create civil remedies to deter, prevent and respond to the harms of non-consensual sharing of intimate images and cyber-bullying;
 - (b) uphold and protect the fundamental freedoms of thought, belief, opinion and expression, including freedom of the press and other media of communication; and
 - (c) provide assistance to Nova Scotians in responding to non-consensual sharing of intimate images and cyber-bullying. 2017, c. 7, s. 2.

Interpretation

- 3** In this Act,
- “agency” means the agency established or designated under Section 12;
 - “Court” means the Supreme Court of Nova Scotia or a judge of that Court;
 - “cyber-bullying” means an electronic communication, direct or indirect, that causes or is likely to cause harm to another individual’s health or

well-being where the person responsible for the communication maliciously intended to cause harm to another individual's health or well-being or was reckless with regard to the risk of harm to another individual's health or well-being, and may include

- (a) creating a web page, blog or profile in which the creator assumes the identity of another person;
- (b) impersonating another person as the author of content or a message;
- (c) disclosure of sensitive personal facts or breach of confidence;
- (d) threats, intimidation or menacing conduct;
- (e) communications that are grossly offensive, indecent, or obscene;
- (f) communications that are harassment;
- (g) making a false allegation;
- (h) communications that incite or encourage another person to commit suicide;
- (i) communications that denigrate another person because of any prohibited ground of discrimination listed in Section 5 of the *Human Rights Act*; or
- (j) communications that incite or encourage another person to do any of the foregoing;

“distribute without consent”, in respect of an intimate image, means to publish, transmit, sell, advertise or otherwise distribute the image to or make the image available to a person other than the person depicted in the image while

- (a) knowing that the person in the image did not consent to the distribution; or
- (b) being reckless as to whether that person consented to the distribution;

“electronic communication” means any form of electronic communication, including any text message, writing, photograph, picture recording or other matter that is communicated electronically;

“intimate image” means a visual recording of a person made by any means, including a photograph, film or video recording,

- (a) in which a person depicted in the image is nude, is exposing the person's genital organs, anal region or her breasts, or is engaged in explicit sexual activity;
- (b) that was recorded in circumstances that gave rise to a reasonable expectation of privacy in respect of the image; and
- (c) where the image has been distributed, in which the person depicted in the image retained a reasonable expectation of privacy at the time it was distributed;

“Minister” means the Minister of Justice. 2017, c. 7, s. 3.

Expectation of privacy not lost

4 (1) A person depicted in an intimate image does not lose the person's expectation of privacy in respect of the image if the person consented to another person recording the image in circumstances where the other person knew or ought reasonably to have known that the image was not to be distributed to any other person.

(2) A person depicted in an intimate image does not lose the person's expectation of privacy in respect of the image if the person provided the image to another person in circumstances where the other person knew or ought reasonably to have known that the image was not to be distributed to any other person. 2017, c. 7, s. 4.

Application to Court

5 (1) An individual whose intimate image was distributed without consent or who is or was the victim of cyber-bullying may apply to the Court for an order under Section 6.

(2) Where the individual referred to in subsection (1) is a minor, that individual's parent or guardian may apply to the Court for an order under Section 6.

(3) Subject to subsection (4) and the regulations, the applicant shall name as a respondent

(a) the person alleged to have distributed an intimate image without consent or to have cyber-bullied;

(b) where the application identifies an electronic device, Internet Protocol address, website, electronic user name or account, electronic mail address or other unique identifier as being or having been used for the distribution of intimate images without consent or cyber-bullying,

(i) the owner of the electronic device,

(ii) any person who has been assigned or has control over the use of the Internet Protocol address, or

(iii) the user or person responsible for the website, user name or account, electronic mail address or other unique identifier;

(c) where the person referred to in clause (a) or (b) is a minor, the parent or guardian of the person;

(d) any other person against whom an order is sought; and

(e) any other person as directed by the Court.

(4) An application under this Section must identify the respondent by name or, where the name of the respondent is not known, by the Internet Protocol address, website, username or account, electronic mail address or other unique identifier used for intimate image distribution or cyber-bullying. 2017, c. 7, s. 5.

Order

6 (1) Where the Court is satisfied that a person has engaged in cyber-bullying or has distributed an intimate image without consent, the Court may make one or more of the following orders:

- (a) an order prohibiting the person from distributing the intimate image;
- (b) an order prohibiting the person from making communications that would be cyber-bullying;
- (c) an order prohibiting the person from future contact with the applicant or another person;
- (d) an order requiring the person to take down or disable access to an intimate image or communication;
- (e) an order declaring that an image is an intimate image;
- (f) an order declaring that a communication is cyber-bullying;
- (g) an order referring the matter to dispute-resolution services provided by the agency or otherwise;
- (h) an order provided for by the regulations;
- (i) any other order which is just and reasonable.

(2) Where it is shown that distribution of an intimate image without consent or cyber-bullying has occurred, the Court may order any person to do one or more of the following:

- (a) provide to the applicant any information in the possession of the person that may help identify a person who may have used an Internet Protocol address, website, electronic username or account, electronic mail address or other unique identifier that may have been used to distribute an intimate image without consent or for cyber-bullying;
- (b) take down or disable access to an intimate image or cyber-bullying communication;
- (c) perform such other action as the Court considers just and reasonable.

(3) Where the Court is satisfied that a person has distributed an intimate image without consent or has engaged in cyber-bullying, the Court may

- (a) order the person to pay general, special, aggravated or punitive damages to the person depicted in the intimate image or the victim of cyber-bullying; and
- (b) order the person to account for profits.

(4) In awarding damages under clause (3)(a), the Court shall not have regard to any order made under clause (3)(b).

(5) An order made under this Section may be interim or final and may include any time limit the Court considers advisable.

(6) The Court may, on application, extend, vary or terminate an order under this Section.

(7) In determining whether to make an order under this Section and what order to make, the Court shall consider the following factors, if relevant:

- (a) the content of the intimate image or cyber-bullying;
- (b) the manner and repetition of the conduct;
- (c) the nature and extent of the harm caused;
- (d) the age and vulnerability of the person depicted in the intimate image distributed without consent or victim of cyber-bullying;
- (e) the purpose or intention of the person responsible for the distribution of the intimate image without consent or the cyber-bullying;
- (f) the occasion, context and subject-matter of the conduct;
- (g) the extent of the distribution of the intimate image or cyber-bullying;
- (h) the truth or falsity of the communication;
- (i) the conduct of the person responsible for the distribution of the intimate image or cyber-bullying, including any effort to minimize harm;
- (j) the age and maturity of the person responsible for distribution of the intimate image without consent or cyber-bullying;
- (k) the technical and operational practicalities and costs of carrying out the order;
- (l) the *Canadian Charter of Rights and Freedoms*; and
- (m) any other relevant factor or circumstance. 2017, c. 7, s. 6.

Defences

7 (1) In an application for an order respecting the distribution of an intimate image without consent or cyber-bullying under this Act, it is a defence for the respondent to show that the distribution of an intimate image without consent or communication is in the public interest and that the distribution or communication did not extend beyond what is in the public interest.

(2) In an application for an order respecting cyber-bullying under this Act, it is a defence for the respondent to show that

- (a) the victim of the cyber-bullying expressly or by implication consented to the making of the communication;
- (b) the publication of a communication was, in accordance with the rules of law relating to defamation,
 - (i) fair comment on a matter of public interest,
 - (ii) done in a manner consistent with principles of responsible journalism, or
 - (iii) privileged;

(c) where the respondent is a peace officer acting in the course of the peace officer's duties, that the communication was necessary to prevent a crime or discover, investigate or prosecute the perpetrators of a crime and did not extend beyond what was necessary;

(d) where the respondent is a public officer acting in the course of the duties of the public officer's office, that the communication was necessary to fulfill the duties of that office and did not extend beyond what was necessary. 2017, c. 7, s. 7.

Publication ban for minors

8 (1) Subject to the regulations, where any person involved in a proceeding relating to an application made under Section 5 is a minor, no person shall publish or broadcast the name of that person, or any information likely to identify that person.

(2) In a proceeding to which subsection (1) applies, the Court shall identify the person by a pseudonym.

(3) For greater certainty, this Section continues to apply once the person is no longer a minor. 2017, c. 7, s. 8.

Publication ban where intimate image distributed

9 (1) Subject to the regulations, where an application is made under Section 5 respecting the distribution of an intimate image without consent and the applicant so requests, no person shall publish or broadcast the name of the applicant or any information likely to identify the applicant.

(2) In a proceeding to which subsection (1) applies, the Court shall identify the applicant by a pseudonym if the applicant requests to be so identified. 2017, c. 7, s. 9.

Additional right of action or remedy not barred

10 Applying for an order under this Act does not limit the right of a victim of cyber-bullying or a person depicted in an intimate image to pursue any right of action or remedy available to that person under common law or by statute. 2017, c. 7, s. 10.

Offence

11 A person who contravenes an order made under this Act, other than an order for payment of damages or accounting of profits, is guilty of an offence and liable on summary conviction to a fine of not more than \$5,000 or to imprisonment for a term of not more than six months, or to both a fine and imprisonment. 2017, c. 7, s. 11.

Role of agency

- 12 (1)** The Minister may establish or designate an agency to
- (a) provide public information and education regarding harmful on-line conduct;
 - (b) advise public bodies on policies for on-line safety and conduct;

(c) provide support and assistance to victims of intimate image distribution without consent and cyber-bullying;

(d) provide information to victims of intimate image distribution without consent and cyber-bullying respecting the criminal justice system and proceedings under this Act;

(e) provide information to victims of intimate image distribution without consent and cyber-bullying respecting contacting police;

(f) provide voluntary dispute-resolution services, including advice, negotiation, mediation and restorative justice approaches in respect of harmful on-line conduct; and

(g) provide such other services, exercise such other powers and authorities and perform such other duties as may be prescribed by the regulations.

(2) The Minister may assign any of the functions and responsibilities of the agency to another person or organization on such terms and conditions as the Minister considers appropriate. 2017, c. 7, s. 12.

No action lies

13 No action lies against the Minister, the agency, the employees of the agency or any other person acting under the authority of this Act for anything done, or omitted to be done, in good faith in the exercise of a power or performance of a duty under this Act or the regulations. 2017, c. 7, s. 13.

Regulations

14 (1) The Minister may make regulations

(a) respecting forms and procedures for hearing an application under Section 5, including an application to extend, vary or terminate an order; and

(b) respecting record-keeping and recording requirements for the agency.

(2) The Governor in Council may make regulations

(a) respecting who must or may be named as a respondent to an application made under Section 5;

(b) respecting the form and content of orders;

(c) providing for additional orders that may be made by the Court;

(d) respecting restrictions on the publication or broadcasting of identifying information respecting a minor pursuant to Section 8;

(e) respecting restrictions on the publication or broadcasting of identifying information respecting an applicant pursuant to Section 9;

(f) prescribing services to be provided by, powers and authorities to be exercised by and duties to be performed by the agency;

(g) respecting the agency's authority and duties in regard to personal information;

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

(i) further defining any word or expression defined in this Act;

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

(3) The exercise by the Minister or the Governor in Council of the authority contained in this Section is a regulation within the meaning of the *Regulations Act*. 2017, c. 7, s. 15.

CHAPTER I-25

An Act to Establish Invest Nova Scotia

Table of Contents

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

	Section
Short title.....	1
Interpretation.....	2
Supervision and management of Act.....	3
Former corporations amalgamated and continued as Invest Nova Scotia.....	4
Assignment of agreements.....	5
Actions of former corporations ratified and confirmed.....	6
Funds continued.....	7
Capital stock of Corporation.....	8
Agent of the Crown.....	9
Objects of Corporation.....	10
Powers of Corporation.....	11
Management and control of Corporation.....	12
Chief Executive Officer.....	13
Advisory Board.....	14
Composition and term of Advisory Board.....	15
Chair and Vice-chair of Advisory Board.....	16
Vacancy on Advisory Board.....	17
Remuneration and expenses of Advisory Board members.....	18
Powers of Advisory Board respecting Corporation employees.....	19
Quorum.....	20
Deputy Minister and Chief Executive Officer may attend meetings.....	21
Duty of good faith and care.....	22
Duties of Advisory Board.....	23
Advisory Board resolutions.....	24
By-laws.....	25
Policy directions.....	26
Fiscal year of Corporation.....	27
Accounting system.....	28
Not subject to taxation.....	29
Annual business plan.....	30
Multi-year strategic plan.....	31
Conflict of Interest Act.....	32
Freedom of Information and Protection of Privacy Act.....	33
Civil Service Act.....	34
Proceedings against the Crown Act.....	35
Regulations.....	36
Transfer of employees.....	37
Trade Union Act.....	38
Public Service Superannuation Act.....	39
Long term disability.....	40
Civil Service Act and Civil Service Collective Bargaining Act.....	41

Short title

- 1 This Act may be cited as the *Invest Nova Scotia Act*. 2022, c. 37, s. 1.

Interpretation

- 2 In this Act,
“Advisory Board” means the Advisory Board of the Corporation;

“Corporation” means Invest Nova Scotia;

“Deputy Minister” means the Deputy Minister of Economic Development;

“former corporation” means Nova Scotia Business Incorporated, established under the former *Nova Scotia Business Incorporated Act*, or Nova Scotia Innovation Corporation, established under the former *Innovation Corporation Act*;

“Minister” means the Minister of Economic Development. 2022, c. 37, s. 2.

Supervision and management of Act

3 The Minister has the general supervision and management of this Act. 2022, c. 37, s. 3.

Former corporations amalgamated and continued as Invest Nova Scotia

4 (1) Effective December 1, 2022,

(a) the former corporations are amalgamated and continued as a body corporate with share capital, to be known as Invest Nova Scotia;

(b) all shares of the former corporations are cancelled;

(c) all matters, affairs and actions of the former corporations are assigned to the Corporation;

(d) subject to subsection (2), all assets of the former corporations, including the rights, titles and interests of the former corporations, are vested in the Corporation;

(e) all obligations and liabilities of the former corporations are the obligations and liabilities of the Corporation; and

(f) subject to Section 5, a reference in any enactment or document to a former corporation is to be read and construed as a reference to the Corporation, unless a contrary intention appears.

(2) The Governor in Council may make an order providing for the disposition of the real and personal property of the former corporations. 2022, c. 37, s. 4.

Assignment of agreements

5 (1) Any agreement to which a former corporation is a party that is in effect immediately before December 1, 2022, is assigned to the Corporation and the Corporation is bound by and may enforce the agreement as if it were an original party.

(2) Where an agreement is assigned under subsection (1),

(a) the assignment may be carried out notwithstanding any restriction on the assignment under any agreement, contract or enactment;

(b) the assignment is not subject to any requirement for notice that may exist in any agreement, contract or enactment;

(c) the assignment is not required to be in writing, notwithstanding any requirement to the contrary in any agreement, contract or enactment; and

(d) no person has or may maintain any cause of action or claim against the Crown in right of the Province, the Minister, the Department of Economic Development or the Corporation arising from or in relation to the assignment. 2022, c. 37, s. 5.

Actions of former corporations ratified and confirmed

6 Any act or thing done by or on behalf of the Corporation or a former corporation before December 1, 2022, is ratified and confirmed. 2022, c. 37, s. 6.

Funds continued

7 (1) In this Section,

(a) “Nova Scotia First Fund” means the fund administered by the Nova Scotia Innovation Corporation under the former *Innovation Corporation Act* immediately before December 1, 2022;

(b) “Nova Scotia Fund” means the Nova Scotia Business Fund continued under the former *Nova Scotia Business Incorporated Act* immediately before December 1, 2022;

(c) “strategic investment fund” has the same meaning as in the *Business Development Incentives Regulations*, made under the former *Nova Scotia Business Incorporated Act*, in force immediately before December 1, 2022.

(2) The Nova Scotia First Fund, the Nova Scotia Fund and the strategic investment funds are continued under the responsibility and administration of the Corporation.

(3) The Governor in Council, upon the recommendation of the Minister, may transfer to the Nova Scotia First Fund and the Nova Scotia Fund such amounts as are considered necessary for the purpose of this Act, and may charge the same to the General Revenue Fund for any year or years.

(4) Repayments and recoveries in respect of sums previously loaned by and outstanding to Nova Scotia Business Incorporated must be paid into the Nova Scotia Fund.

(5) Any repayment or recovery made in respect of any transaction out of the Nova Scotia Fund must be credited to the Nova Scotia Fund. 2022, c. 37, s. 7.

Capital stock of Corporation

8 The capital stock of the Corporation is one share with a par value of one dollar, to be issued and registered in the name of the Crown in right of the Province as represented by the Minister. 2022, c. 37, s. 8.

Agent of the Crown

9 The Corporation is an agent of the Crown in right of the Province. 2022, c. 37, s. 9.

Objects of Corporation

10 The objects of the Corporation are to

- (a) promote economic growth and community economic development in the Province by enabling business, innovation and entrepreneurship;
- (b) exercise and perform the functions and duties conferred on it by this Act, the regulations, the business plan of the Corporation and the strategic plan of the Corporation; and
- (c) fulfill such other roles and responsibilities as may be assigned to the Corporation by the Minister. 2022, c. 37, s. 10.

Powers of Corporation

11 The Corporation may

- (a) develop, administer and deliver programs and services to encourage, sustain, improve or enable economic growth and community economic development in the Province;
- (b) purchase or acquire any common or preferred shares or other equity, including venture capital investments, of or in relation to a business;
- (c) sell, assign, transfer or otherwise dispose of the common or preferred shares or other equity or debt securities, including venture capital investments, of or in relation to a business;
- (d) undertake trade operations and programs that are consistent with the trade policy of the Province, as determined by the Minister;
- (e) undertake investment attraction operations and programs that are consistent with the strategic direction of the Province, as determined by the Minister;
- (f) deliver, in whole or in part, any programs on behalf of the Minister as the Minister may direct;
- (g) enter into agreements with any person, organization or body, including, with the approval of the Minister, a federal, provincial or municipal government or any department or an agency thereof;
- (h) subject to the regulations, provide business development incentives to encourage, sustain, improve or enable economic growth in the Province;
- (i) buy, acquire, lease, sell or otherwise dispose of any real or personal property or any interest therein;
- (j) employ and contract with, in accordance with the *Personal Services Contract Regulations* made under the *Public Service Act*, such persons as it may require for the purpose of carrying out its objects;
- (k) do such other things as may be incidental or conducive to carrying into effect the purpose and intent of this Act or the regulations; and
- (l) exercise such other powers as may be prescribed by the regulations. 2022, c. 37, s. 11.

Management and control of Corporation

12 (1) The management and control of the affairs of the Corporation are vested in the Minister.

(2) The Minister may exercise the powers of the Corporation subject to this Act and the regulations. 2022, c. 37, s. 12.

Chief Executive Officer

13 (1) The Governor in Council shall appoint a Chief Executive Officer of the Corporation.

(2) The Chief Executive Officer reports to the Deputy Minister.

(3) The Chief Executive Officer shall perform such duties as the Minister may determine. 2022, c. 37, s. 13.

Advisory Board

14 The Corporation has an Advisory Board that provides advice and recommendations to further the Corporation's objects. 2022, c. 37, s. 14.

Composition and term of Advisory Board

15 (1) The Advisory Board consists of not more than 10 members appointed by the Governor in Council.

(2) Advisory Board members hold office for such period of time as is determined by the Governor in Council and may be reappointed. 2022, c. 37, s. 15.

Chair and Vice-chair of Advisory Board

16 The Governor in Council shall appoint a Chair and a Vice-chair of the Advisory Board, who hold office for such period of time as is determined by the Governor in Council. 2022, c. 37, s. 16.

Vacancy on Advisory Board

17 A vacancy on the Advisory Board does not impair the right of the remaining members to act. 2022, c. 37, s. 17.

Remuneration and expenses of Advisory Board members

18 Each Advisory Board member is entitled to such remuneration and reimbursement of expenses as is determined by the Governor in Council. 2022, c. 37, s. 18.

Powers of Advisory Board respecting Corporation employees

19 Subject to the approval of the Deputy Minister, the Advisory Board may

(a) avail itself of the services of the employees of the Corporation; and

(b) appoint an employee of the Corporation to act as the Secretary of the Advisory Board. 2022, c. 37, s. 19.

Quorum

20 A majority of Advisory Board members constitutes a quorum. 2022, c. 37, s. 20.

Deputy Minister and Chief Executive Officer may attend meetings

21 The Deputy Minister and the Chief Executive Officer of the Corporation may attend meetings of the Advisory Board, but the Deputy Minister and the Chief Executive Officer

- (a) are not members of the Advisory Board; and
- (b) may not vote at meetings of the Advisory Board. 2022, c. 37, s. 21.

Duty of good faith and care

22 A member of the Advisory Board shall, when exercising the powers or performing the duties of the member's position,

- (a) act honestly and in good faith with a view to the best interests of the Corporation;
- (b) exercise the care, diligence and skill that a reasonably prudent individual would exercise in comparable circumstances; and
- (c) act in accordance with this Act and the regulations. 2022, c. 37, s. 22.

Duties of Advisory Board

23 The Advisory Board shall

- (a) report to the Minister through the Chief Executive Officer;
- (b) advise the Minister on such matters related to economic growth in the Province as are referred to the Advisory Board for consideration by the Minister; and
- (c) bring to the attention of the Minister matters that are of interest and concern to the public or other stakeholders respecting or affecting economic growth in the Province. 2022, c. 37, s. 23.

Advisory Board resolutions

24 The Advisory Board may pass resolutions to document its recommendations to the Minister but, for greater certainty, the Minister is not bound by any recommendation or resolution of the Board. 2022, c. 37, s. 24.

Bylaws

25 The Minister may make bylaws, not inconsistent with this Act, respecting the internal organization and procedures of the Advisory Board, subject to the approval of the Governor in Council. 2022, c. 37, s. 25.

Policy directions

26 (1) The Minister may issue such policy directions to the Advisory Board as are consistent with this Act and the strategic economic policy objectives of the Government if, in the opinion of the Minister, it is in the public interest to do so.

(2) The Advisory Board shall comply with a direction issued under subsection (1). 2022, c. 37, s. 26.

Fiscal year of Corporation

27 The fiscal year of the Corporation is the same as the fiscal year of the Province. 2022, c. 37, s. 27.

Accounting system

28 The Corporation's system of accounting is subject to the approval of the Minister of Finance and Treasury Board. 2022, c. 37, s. 28.

Not subject to taxation

29 The Corporation, its property and its assets are not subject to taxation. 2022, c. 37, s. 29.

Annual business plan

30 (1) Annually as required by the Minister, the Corporation shall submit to the Minister for approval a detailed business plan for the Corporation for the following fiscal year.

(2) The business plan must contain such information as required by the Minister. 2022, c. 37, s. 30.

Multi-year strategic plan

31 When required by the Minister, the Corporation shall submit to the Minister for approval a multi-year strategic plan for the operation of the Corporation. 2022, c. 37, s. 31.

Conflict of Interest Act

32 The Advisory Board 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 Advisory Board members. 2022, c. 37, s. 32.

Freedom of Information and Protection of Privacy Act

33 The Corporation is a public body as defined in the *Freedom of Information and Protection of Privacy Act* and, for greater certainty, that Act applies to the Corporation. 2022, c. 37, s. 33.

Civil Service Act

34 Section 41 of the *Civil Service Act* applies with necessary changes to the Corporation and the Advisory Board. 2022, c. 37, s. 34.

Proceedings against the Crown Act

35 (1) The *Proceedings against the Crown Act* applies to actions and proceedings against the Corporation.

(2) For the purpose of this Section, a reference in the *Proceedings against the Crown Act* to

(a) the Crown is to be construed as a reference to the Corporation; and

(b) the General Revenue Fund is to be construed as a reference to the funds of the Corporation.

(3) In proceedings under this Section, an action must be brought against the Corporation in the name of the Corporation.

(4) Where a document or notice is to be served upon or given to the Corporation pursuant to this Section or the *Proceedings against the Crown Act*, it may be served by delivering a copy to the office of the Attorney General or the Deputy Attorney General or any lawyer employed in the Legal Services Division of the Department of Justice or by delivering a copy to a lawyer designated for that purpose by the Attorney General and such service is deemed to be service on the Corporation. 2022, c. 37, s. 35.

Regulations

36 (1) The Governor in Council may make regulations

(a) prescribing types of business development incentives and any limits that apply to business development incentives;

(b) prescribing the criteria, eligibility, terms and conditions upon which business development incentives may be provided;

(c) respecting the powers, duties and activities of the Corporation;

(d) respecting any matter authorized by this Act to be done by regulation;

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

(f) respecting any matter or thing that 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*. 2022, c. 37, s. 36.

Transfer of employees

37 (1) Effective December 1, 2022, every employee of a former corporation

(a) ceases to be an employee of the former corporation and becomes an employee of the Corporation;

(b) is employed by the Corporation on the same or equal terms and conditions of employment as those under which the employee was employed by the former corporation, until changed by contract of employment or collective agreement, as the case may be;

(c) is deemed to have been employed with the Corporation for the same period of employment that the employee was credited with as an employee of the former corporation; and

(d) is entitled to all vacation leave accumulated, less any vacation arrears that accrued, while the employee was employed by the former corporation.

(2) The continuity of employment of an employee transferred under this Section is not broken by the effect of this Section.

(3) The obligations and liabilities of the former corporations in respect of their employees are the obligations and liabilities of the Corporation, including all employee benefits and entitlements.

(4) For greater certainty, the operation of this Section is deemed not to

(a) constitute a termination, constructive dismissal or lay-off of any employee;

(b) constitute a breach, termination, repudiation or frustration of any contract;

(c) constitute an event of default or *force majeure* under any contract; or

(d) give rise to a breach, termination, repudiation or frustration of any licence, permit or other right, or to any right to terminate or repudiate a contract, licence, permit or other right, or to any estoppel. 2022, c. 37, s. 37.

Trade Union Act

38 The creation of the Corporation is a transfer of business and the Corporation is a transferee for the purpose of Section 38 of the *Trade Union Act*. 2022, c. 37, s. 38.

Public Service Superannuation Act

39 Each employee of the Corporation who, immediately before December 1, 2022, was an employee within the meaning of the *Public Service Superannuation Act* or was included in a bargaining unit whose collective agreement provided for participation in the Public Service Superannuation Plan is deemed to continue to be an employee in the public service of the Province for the purpose of the *Public Service Superannuation Act*, and service in the employment of the Corporation is deemed to be service in the public service of the Province for the purpose of that Act. 2022, c. 37, s. 39.

Long term disability

40 Subject to any applicable collective agreement or contract of employment, each employee of the Corporation who, immediately before December 1, 2022, was covered by the Nova Scotia Public Service Long Term Disability Plan or was included in a bargaining unit whose collective agreement provided for long-term disability benefits under the Plan is deemed to continue to be a person to whom the Plan applies. 2022, c. 37, s. 40.

Civil Service Act and Civil Service Collective Bargaining Act

41 The *Civil Service Act* and the regulations made under that Act and the *Civil Service Collective Bargaining Act* do not apply to employees of the Corporation. 2022, c. 37, s. 41.

CHAPTER I-26

**An Act Respecting
Involuntary Psychiatric Treatment**

Table of Contents

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

	Section
Short title.....	1
Purpose of Act.....	2
Interpretation.....	3
Voluntary Admission	
Voluntary patient.....	4
Assessments of capability to consent.....	5
Voluntary patient may consent.....	6
Detention of voluntary patient.....	7
Medical Examination and Involuntary Psychiatric Assessment	
Certificate for involuntary assessment.....	8
Form and contents of certificate.....	9
Two certificates are sufficient authority.....	10
Certificate is prima facie evidence.....	11
Right to leave facility.....	12
Judicial order for examination.....	13
Powers of peace officer.....	14
Detention for 24 hours.....	15
Medical examination.....	16
Involuntary Admission	
Admission as involuntary patient.....	17
Capacity to make treatment decision.....	18
Contents of declaration.....	19
Psychiatric facility to admit.....	20
Declaration of renewal.....	21
Time limitations.....	22
Examination of declarations.....	23
Change to voluntary status.....	24
Change to involuntary status.....	25
Duty to inform patient.....	26
Admission under warrant or order.....	27
Admission pursuant to other laws.....	28
Transfer of involuntary patient.....	29
Transfer for hospital treatment.....	30
Transfer from other jurisdiction.....	31
Transfer to other jurisdiction.....	32
Certificate remains in force on transfer.....	33
Authority to treat transferred patient.....	34
Notification and transfer of records.....	35
Review by Review Board.....	36
Periodic reviews.....	37
Substitute Decision-makers	
Who may give or refuse consent.....	38
Basis for decision.....	39
Determining best interest.....	40

Reliance on statement	41
Review of treatment decisions	42
Certificate of Leave	
Issuance of certificate	43
Cancellation of leave	44
Review respecting breach of condition	45
Absence without leave	46
Treatment in the Community	
Community treatment order	47
Community treatment plan	48
Variation of plan	49
Voluntary continuation under plan	50
Expiration of order	51
Renewals of order	52
Responsibility of issuing psychiatrist	53
No liability where belief is reasonable	54
Review of condition	55
Failure to comply with order	56
Where services become unavailable	57
Application to Review Board respecting order	58
Review by Minister	59
Patient-advisor Service and Patient Rights	
Regulations designating services and qualifications	60
Functions and duties of patient-advisor service	61
Notice to service	62
Right to meet and confer	63
Rights and privileges not to be deprived	64
Review Board	
Appointment of Review Board	65
Panels of Review Board	66
Conflict of interest or bias	67
Applications for review	68
Conduct of hearings	69
Notice	70
Closed hearing	71
Entitlement to representation	72
Evidence	73
Powers of Review Board during hearing	74
Public Inquiries Act	75
Decision	76
Onus of proof	77
Standard of proof	78
Appeal	79
Annual report	80
General	
No action lies	81
Application of Personal Health Information Act and Hospitals Act	82
Regulations	83

Short title

1 This Act may be cited as the *Involuntary Psychiatric Treatment Act*.
2005, c. 42, s. 1.

Purpose of Act

2 The purpose of this Act is to ensure that issues dealing with mental health are dealt with in accordance with the following guiding principles:

- (a) persons of all ages with mental disorders are entitled to be treated with dignity and respect;
- (b) each person has the right to make treatment decisions to the extent of the person's capacity to do so;
- (c) treatment and related services are to be offered in the least-restrictive manner and environment with the goal of having the person continue to live in the community or return to the person's home surroundings at the earliest possible time;
- (d) the primary mode of admission to a psychiatric facility must be as a voluntary patient wherever possible;
- (e) treatment and related services, where possible, should promote the person's self-determination and self-reliance;
- (f) the person has the right to a treatment plan that maximizes the person's potential and is based on the principles of evidence-based best practice;
- (g) persons with mental disorders should have access to mental health services as close to the person's home as practicable;
- (h) any declaration of involuntary admission or declaration of incapacity is made on the basis of evidence. 2005, c. 42, s. 2.

Interpretation

3 In this Act,

“attending psychiatrist” means the physician who is responsible for the examination, care and treatment of a patient in a psychiatric facility;

“certificate for involuntary psychiatric assessment” means the certificate granted pursuant to Section 8;

“certificate of cancellation of leave” means the certificate granted pursuant to Section 44;

“certificate of leave” means the certificate granted pursuant to subsection 43(1);

“chief executive officer” means the person who is responsible for the administration and management of a health authority, as defined by the *Health Authorities Act*, or a person designated in writing by such responsible person;

“common-law partner” of an individual means another individual who has cohabited with the individual in a conjugal relationship for a period of at least one year;

“community treatment order” means a community treatment order granted pursuant to Section 47;

“declaration of change of status” means a declaration granted pursuant to Section 24;

“declaration of competency” means a declaration of competency pursuant to subsection 11(3) of the *Hospitals Act*;

“declaration of involuntary admission” means a declaration granted pursuant to Section 17;

“declaration of renewal” means a declaration renewing a patient’s involuntary admission pursuant to Section 21;

“hospital” means a hospital pursuant to the *Hospitals Act*;

“involuntary patient” means a patient who is admitted to a psychiatric facility pursuant to a declaration of involuntary admission;

“involuntary psychiatric assessment” means an assessment of a person’s mental condition by a psychiatrist for the purpose of determining whether the person should be admitted as an involuntary patient pursuant to Section 17;

“judge” means a judge of the Supreme Court of Nova Scotia (Family Division) or, in an area of the Province where there is no Supreme Court (Family Division), a judge of the Family Court;

“medical examination” means an assessment of a person’s mental condition by a physician pursuant to Section 8;

“mental disorder” means a substantial disorder of behaviour, thought, mood, perception, orientation or memory that severely impairs judgement, behaviour, capacity to recognize reality or the ability to meet the ordinary demands of life, in respect of which psychiatric treatment is advisable;

“Minister” means the Minister of Health and Wellness;

“panel” means a panel of the Review Board;

“patient advisor” means a representative or member of the staff of the patient advisor service;

“patient-advisor service” means the service or organization designated by the regulations as the patient-advisor service;

“physician” means a physician licensed pursuant to the *Medical Act*;

“psychiatric facility” means a hospital or part of a hospital designated by the regulations for the examination, care and treatment of a person with a mental disorder;

“psychiatrist” means a physician

(a) who holds a specialist’s certificate in psychiatry issued by the Royal College of Physicians and Surgeons of Canada; or

(b) whose combination of training and experience in psychiatry is satisfactory to the Nova Scotia College of Physicians and Surgeons and who has been approved by the College as a psychiatrist for the purpose of this Act;

“Review Board” means the Review Board established under Section 65;

“spouse” means, with respect to any person, a person who is cohabiting with that person in a conjugal relationship as married spouse, registered domestic partner or common-law partner;

“substitute decision-maker” means a person who is given the authority to make care or treatment decisions on behalf of an involuntary patient;

“voluntary patient” means a person who remains in a psychiatric facility with that person’s consent or the consent of a substitute decision-maker. 2005, c. 42, s. 3; 2008, c. 8, s. 38; 2014, c. 32, s. 135.

VOLUNTARY ADMISSION

Voluntary patient

4 A psychiatrist who has examined a person and who has assessed the person’s mental condition may admit the person as a voluntary patient of a psychiatric facility if the psychiatrist is of the opinion that the person would benefit from an inpatient admission. 2005, c. 42, s. 4.

Assessments of capability to consent

5 Any assessments of the capability of a voluntary patient to consent to treatment or the appointment of a substitute decision-maker must be carried out pursuant to the relevant provisions of the *Hospitals Act*. 2005, c. 42, s. 5.

Voluntary patient may consent

6 Subject to Section 7, a voluntary patient who is capable of consenting to admission or discharge from a psychiatric facility may do so or a substitute decision-maker may do so on behalf of the patient. 2005, c. 42, s. 6.

Detention of voluntary patient

7 (1) A member of the treatment staff of a psychiatric facility may detain and, where necessary, restrain a voluntary patient requesting to be discharged if the staff member believes on reasonable grounds that the patient

- (a) has a mental disorder;
- (b) because of the mental disorder, is likely to cause serious harm to self or to another person or to suffer serious mental or physical deterioration if the patient leaves the psychiatric facility; and
- (c) needs to have a medical examination conducted by a physician.

(2) A patient who is detained under subsection (1) must be examined by a physician within three hours. 2005, c. 42, s. 7.

MEDICAL EXAMINATION AND INVOLUNTARY PSYCHIATRIC ASSESSMENT

Certificate for involuntary assessment

8 Where a physician has completed a medical examination of a person and is of the opinion that the person apparently has a mental disorder and that

- (a) the person, as a result of the mental disorder,
 - (i) is threatening or attempting to cause serious harm to self or has recently done so, has recently caused serious harm to self,

is seriously harming or is threatening serious harm toward another person or has recently done so, or

(ii) is likely to suffer serious physical impairment or serious mental deterioration, or both; and

(b) the person would benefit from psychiatric inpatient treatment in a psychiatric facility and is not suitable for inpatient admission as a voluntary patient,

the physician may complete a certificate for involuntary psychiatric assessment for the person. 2005, c. 42, s. 8.

Form and contents of certificate

9 (1) A certificate for involuntary psychiatric assessment must be in the form prescribed by the regulations and a physician who signs a certificate shall

(a) set out in the certificate

(i) that the physician has conducted a medical examination of the person who is the subject of the certificate within the previous 72 hours,

(ii) the date on which the physician examined the person, and

(iii) that the physician made careful inquiry into the facts relating to the case of the person while providing reasons to support the opinion that the person has a mental disorder and that the criteria in clauses 8(a) and (b) are fulfilled; and

(b) distinguish in the certificate between facts observed by the physician and facts communicated to the physician by any other person.

(2) The certificate for involuntary psychiatric assessment must be signed by the physician who examined the person.

(3) A certificate for involuntary psychiatric assessment is not effective unless the physician signs it within 72 hours after the medical examination. 2005, c. 42, s. 9.

Two certificates are sufficient authority

10 (1) Notwithstanding anything contained in this Act, two certificates for involuntary psychiatric assessment are sufficient authority for

(a) any peace officer to take the person into custody as soon as possible and to a suitable place for an involuntary psychiatric assessment as soon as possible;

(b) the person to be detained, restrained and observed in a psychiatric facility for not more than 72 hours; and

(c) a psychiatrist to conduct an involuntary psychiatric assessment.

(2) Notwithstanding subsection (1), one medical certificate signed by a physician is sufficient authority for the purpose of clauses (1)(a), (b) and (c)

where compelling circumstances exist and where a second physician is not readily available to examine the person and execute a second certificate. 2005, c. 42, s. 10.

Certificate is prima facie evidence

11 Every medical certificate made and given under this Act is prima facie evidence of the facts therein appearing and that the judgment therein set out has been formed by the physician on such facts as if the matters therein appearing have been verified on oath. 2005, c. 42, s. 11.

Right to leave facility

12 Where, within 72 hours of detention pursuant to Section 10, the person has not been admitted to the psychiatric facility as an involuntary patient under Section 17 or as a voluntary patient under Section 4, the chief executive officer shall ensure that the person is promptly informed that the person has the right to leave the psychiatric facility, subject to any detention that is lawfully authorized otherwise than under this Act. 2005, c. 42, s. 12.

Judicial order for examination

13 (1) Any person may make a written statement under oath or affirmation before a judge requesting an order for the medical examination of another person by a physician and setting out the reasons for the request, and the judge shall receive the statement.

(2) A judge who receives a statement under subsection (1) shall consider the statement and, where the judge considers it not to be frivolous, vexatious or malicious, hear and consider, after appropriate notice has been given to both parties, the allegations of the person who made the statement and the evidence of any witnesses.

(3) A judge under subsection (2) may, where the judge considers it necessary under the circumstances, proceed with the hearing *ex parte*.

(4) The judge may issue an order for the medical examination of the other person if the judge has reasonable and probable grounds to believe that the other person

(a) has a mental disorder;

(b) will not consent to undergo a medical examination by a physician; and

(c) as a result of the mental disorder,

(i) is threatening or attempting to cause serious harm to self or has recently done so, or has recently caused serious harm to self,

(ii) is seriously harming or is threatening serious harm toward another person or has recently done so, or

(iii) is likely to suffer serious physical impairment or serious mental deterioration, or both.

(5) An order under subsection (4) for the medical examination of a person by a physician shall direct

- (a) a member of a police force named in the order; or
- (b) an individual named in the order,

or both, to take the person named or described in the order into custody and take the person forthwith to a place where the person may be detained for the medical examination.

(6) An order under subsection (4) is valid for a period of seven days from and including the day that it is made. 2005, c. 42, s. 13.

Powers of peace officer

14 A peace officer may take a person into custody and take the person forthwith to a place for a medical examination by a physician if the peace officer has reasonable and probable grounds to believe that

- (a) the person apparently has a mental disorder;
 - (b) the person will not consent to undergo medical examination;
 - (c) it is not feasible in the circumstances to make application to a judge for an order for a medical examination pursuant to Section 13; and
 - (d) the person,
 - (i) as a result of the mental disorder, is threatening or attempting to cause serious harm to self or has recently done so, has recently caused serious harm to self, is seriously harming or is threatening serious harm toward another person or has recently done so,
 - (ii) as a result of the mental disorder, is likely to suffer serious physical impairment or serious mental deterioration, or both, or
 - (iii) is committing or about to commit a criminal offence.
- 2005, c. 42, s. 14.

Detention for 24 hours

15 (1) Where a person is taken in custody for a medical examination pursuant to Section 13 or 14, the person may be detained for up to 24 hours in an appropriate place in order for a medical examination to take place.

(2) For the purpose of subsection (1), an appropriate place where a person may be detained means a hospital, the office of a physician or another suitable place for a medical examination, but does not include a jail or lock-up unless no other suitable place is available. 2005, c. 42, s. 15.

Medical examination

16 (1) A peace officer or other authorized individual who takes a person into custody for a medical examination shall convey the person by the least intrusive means possible without compromising the safety of the person.

(2) The peace officer or other authorized individual shall remain at the place of the medical examination and shall retain custody of the person until the medical examination is completed.

(3) Where a person is taken for a medical examination and it is decided not to recommend involuntary psychiatric assessment of the person, the peace officer or other authorized individual shall arrange and pay for the return of the person to the place where the person was taken into custody or, at the person's request, to some other appropriate place. 2005, c. 42, s. 16.

INVOLUNTARY ADMISSION

Admission as involuntary patient

17 Where a psychiatrist has conducted an involuntary psychiatric assessment and is of the opinion that

- (a) the person has a mental disorder;
- (b) the person is in need of the psychiatric treatment provided in a psychiatric facility;
- (c) the person, as a result of the mental disorder,
 - (i) is threatening or attempting to cause serious harm to self or has recently done so, has recently caused serious harm to self, is seriously harming or is threatening serious harm toward another person or has recently done so, or
 - (ii) is likely to suffer serious physical impairment or serious mental deterioration, or both;
- (d) the person requires psychiatric treatment in a psychiatric facility and is not suitable for inpatient admission as a voluntary patient; and
- (e) as a result of the mental disorder, the person does not have the capacity to make admission and treatment decisions,

the psychiatrist may admit the person as an involuntary patient by completing and filing with the chief executive officer a declaration of involuntary admission in the form prescribed by the regulations. 2005, c. 42, s. 17.

Capacity to make treatment decision

18 (1) In determining a patient's capacity to make a treatment decision pursuant to clause 17(e), the psychiatrist shall consider whether the patient fully understands and appreciates

- (a) the nature of the condition for which the specific treatment is proposed;
- (b) the nature and purpose of the specific treatment;
- (c) the risks and benefits involved in undergoing the specific treatment; and
- (d) the risks and benefits involved in not undergoing the specific treatment.

(2) In determining a patient's capacity to make a treatment decision, the psychiatrist shall also consider whether the patient's mental disorder affects the patient's ability to fully appreciate the consequences of making the treatment decision. 2005, c. 42, s. 18.

Contents of declaration

19 A psychiatrist who signs the declaration of involuntary admission shall

- (a) set out in the declaration
 - (i) that the psychiatrist personally examined the person who is the subject of the declaration,
 - (ii) the date or dates on which the psychiatrist examined the person, and
 - (iii) the reasons to support the psychiatrist's opinion that
 - (A) the person has a mental disorder, and
 - (B) the criteria in clauses 17(a) to (e) are fulfilled;
- (b) distinguish in the declaration between facts observed by the psychiatrist and facts communicated to the psychiatrist by any other person; and
- (c) indicate to which psychiatric facility the person is to be admitted. 2005, c. 42, s. 19.

Psychiatric facility to admit

20 Notwithstanding Section 19, a person in respect of whom a declaration of involuntary admission has been executed must be admitted to the psychiatric facility to which the person is taken. 2005, c. 42, s. 20.

Declaration of renewal

21 (1) Before the expiry of a declaration of involuntary admission, the attending psychiatrist shall examine the patient and assess the patient's mental condition and may renew the patient's status as an involuntary patient by completing and filing with the chief executive officer a declaration of renewal in the form prescribed by the regulations, if the prerequisites for admission as an involuntary patient as set out in Section 17 are met.

(2) Where the attending psychiatrist does not renew the patient's status as an involuntary patient, the psychiatrist shall promptly inform the patient that the patient has the right to leave the psychiatric facility, subject to any detention that is lawfully authorized otherwise than under this Act.

(3) Section 19 applies with necessary changes in respect of a declaration of renewal.

(4) Subsection (1) applies with necessary changes with respect to the expiry of a declaration of renewal. 2005, c. 42, s. 21.

Time limitations

22 An involuntary patient may be detained, observed and examined in a psychiatric facility

- (a) for not more than one month under a declaration of involuntary admission; and
- (b) for not more than

- (i) one additional month under a declaration of renewal,
- (ii) two additional months under a second declaration of renewal,
- (iii) three additional months under a third declaration of renewal, and
- (iv) three additional months for any subsequent declarations of renewal. 2005, c. 42, s. 22.

Examination of declarations

23 (1) Immediately after the filing of a declaration of involuntary admission or a declaration of renewal, the chief executive officer shall examine the declaration to ascertain whether or not the declaration has been completed in accordance with this Act.

(2) Where, in the opinion of the chief executive officer, the declaration has not been completed in accordance with this Act before the expiry of the period of detention authorized by this Act, the chief executive officer shall ensure that the attending psychiatrist is so informed. 2005, c. 42, s. 23.

Change to voluntary status

24 (1) An involuntary patient

- (a) who does not continue to meet the requirements of clauses 17(a) to (e); or
- (b) whose authorized period of detention has expired,

must be changed to the status of a voluntary patient, subject to any detention that is lawfully authorized otherwise than under this Act.

(2) An attending psychiatrist may change the status of an involuntary patient to that of a voluntary patient by completing and filing with the chief executive officer a declaration of change of status.

(3) Where a patient's status is changed to that of a voluntary patient, the chief executive officer shall ensure that the patient is promptly informed that the patient is a voluntary patient and has the right to leave the psychiatric facility, subject to any detention that is lawfully authorized otherwise than under this Act. 2005, c. 42, s. 24.

Change to involuntary status

25 After examining a voluntary patient and assessing the patient's mental condition, the attending psychiatrist may change the status of the patient to that of an involuntary patient by completing and filing with the chief executive officer a declaration of involuntary admission if the prerequisites for admission as an involuntary patient set out in Section 17 are met. 2005, c. 42, s. 25.

Duty to inform patient

26 Where a declaration of involuntary admission or a declaration of renewal is filed, the chief executive officer shall promptly inform the patient and the substitute decision-maker in writing that the patient

(a) has been admitted or continued as an involuntary patient or had the patient's status changed to that of an involuntary patient, as the case may be, of the psychiatric facility and the reasons for the change;

(b) has the right to apply to the Review Board for a review of the patient's status; and

(c) has the right to retain and instruct counsel without delay. 2005, c. 42, s. 26.

Admission under warrant or order

27 (1) A psychiatric facility shall admit as a patient any person named in a warrant or order purporting to be made under an Act of the Parliament of Canada or of the Province.

(2) The psychiatric facility shall

(a) notify the Attorney General forthwith upon the admission of a person pursuant to this Section;

(b) report to the Attorney General immediately upon the recovery of such person and, in any event, at intervals of not more than 12 months on the condition and progress of all persons detained in the psychiatric facility, including progress of all persons detained in the psychiatric facility pursuant to this Section; and

(c) make any report required by the terms of the committing order or warrant.

(3) The provisions of this Act respecting discharge or transfer of patients do not apply to patients admitted pursuant to this Section if the terms of the committing order or warrant conflict with those provisions. 2005, c. 42, s. 27.

Admission pursuant to other laws

28 (1) In addition to the circumstances outlined in Section 27, a person may be admitted to a psychiatric facility pursuant to an Act of the Parliament of Canada or of the Province.

(2) A person admitted to a psychiatric facility pursuant to subsection (1) shall be admitted to the psychiatric facility, detained there and discharged from there in accordance with the appropriate legislation governing that person or any regulations, orders in council, orders of a court or warrants made pursuant to such legislation. 2005, c. 42, s. 28.

Transfer of involuntary patient

29 Where the chief executive officer believes that it is in the best interests of an involuntary patient to be treated in a psychiatric facility other than the psychiatric facility the patient is currently in, the chief executive officer may transfer the involuntary patient upon the agreement of the chief executive officer of that psychiatric facility. 2005, c. 42, s. 29.

Transfer for hospital treatment

30 When an involuntary patient requires hospital treatment that cannot be provided in a psychiatric facility, the chief executive officer may transfer the

patient to a hospital for treatment and return the patient to the psychiatric facility on the conclusion of the treatment. 2005, c. 42, s. 30.

Transfer from other jurisdiction

31 A psychiatric facility may admit on transfer a patient who is in a psychiatric facility in another jurisdiction or in a hospital under the jurisdiction of the Government of Canada and may detain such person for the purpose of an involuntary psychiatric assessment. 2005, c. 42, s. 31.

Transfer to other jurisdiction

32 When it appears to the Minister that

(a) an involuntary patient has come or been brought into the Province and the patient's care and treatment is the responsibility of another jurisdiction; or

(b) it would be in the best interests of an involuntary patient to be cared for in another jurisdiction,

the Minister may, having complied with the laws of the other jurisdiction, transfer the involuntary patient to the other jurisdiction. 2005, c. 42, s. 32.

Certificate remains in force on transfer

33 When an involuntary patient is transferred pursuant to Section 29 or 30, the authority conferred by any certificates relating to the patient continues in force in the psychiatric facility or hospital to which the patient is transferred. 2005, c. 42, s. 33.

Authority to treat transferred patient

34 Where a patient in a psychiatric facility is transferred to another psychiatric facility or hospital, the psychiatric facility or hospital receiving the patient has the same authority to detain or treat the patient as the psychiatric facility from which the patient was transferred had. 2005, c. 42, s. 34.

Notification and transfer of records

35 (1) When a psychiatric facility transfers a patient pursuant to Section 29, 30 or 32, the psychiatric facility shall immediately notify the patient's substitute decision-maker.

(2) On the transfer of the patient referred to in subsection (1), the psychiatric facility transferring the patient shall forward to the new psychiatric facility or hospital to which the patient is transferred a copy of all relevant documents and information pertaining to the patient. 2005, c. 42, s. 35.

Review by Review Board

36 (1) Upon receiving a request for review pursuant to clause 26(b), the Review Board shall, as soon as possible, but no later than 21 days after the request, review a patient's status to determine whether the prerequisites for admission as an involuntary patient as set out in Section 17

(a) were met when the declaration of involuntary admission or the declaration of renewal, as the case may be, was filed in respect of the patient; and

(b) continue to be met at the time of the hearing of the application.

(2) The Review Board may, by order, confirm the patient's status as an involuntary patient if the Review Board determines that the prerequisites for admission as an involuntary patient set out in Section 17

(a) were met when the declaration of involuntary admission or the declaration of renewal was filed and continued to be met at the time of the hearing of the application; or

(b) were not met when the declaration of involuntary admission or the declaration of renewal was filed but were met at the time of the hearing of the application.

(3) The Review Board shall, by order, rescind the declaration of involuntary admission or the declaration of renewal if the Review Board determines that the prerequisites for admission as an involuntary patient set out in Section 17

(a) were not met when the declaration of involuntary admission or the declaration of renewal was filed and were not met at the time of the hearing of the application; or

(b) were met when the declaration of involuntary admission or the declaration of renewal was filed but did not continue to be met at the time of the hearing of the application.

(4) An order of the Review Board confirming or rescinding a declaration of involuntary admission or a declaration of renewal applies to the declaration of involuntary admission or the declaration of renewal in force immediately before the making of the order. 2005, c. 42, s. 36.

Periodic reviews

37 The Review Board shall review the file of each person detained under a declaration of involuntary admission and the patient is deemed to have made an application to the Review Board

(a) 60 days from the date of the initial declaration of involuntary admission;

(b) at the end of the sixth, 12th, 18th and 24th month stage from the date of the initial declaration of involuntary admission; and

(c) where a declaration of involuntary admission is still necessary after 24 months, every 12 months thereafter. 2005, c. 42, s. 37.

SUBSTITUTE DECISION-MAKERS

Who may give or refuse consent

38 (1) For the purpose of this Act, consent may be given or refused on behalf of an involuntary patient or a patient on a community treatment order by a

substitute decision-maker who has capacity and is willing to make the decision to give or refuse the consent from the following in descending order:

- (a) a person who has been authorized to give consent under the *Personal Directives Act* or a delegate authorized under the *Personal Directives Act*;
- (b) the patient's guardian appointed by a court of competent jurisdiction;
- (c) the spouse of the patient;
- (d) an adult child of the patient;
- (e) a parent of the patient;
- (f) a person who stands in *loco parentis* to the patient;
- (g) an adult sibling of the patient;
- (h) a grandparent of the patient;
- (i) an adult grandchild of the patient;
- (j) an adult aunt or uncle of the patient;
- (k) an adult niece or nephew of the patient;
- (l) any other adult next of kin of the patient; or
- (m) the Public Trustee.

(2) Where a person in a category in subsection (1) fulfills the criteria for a substitute decision-maker as set out in subsection (4) but refuses consent on the patient's behalf, the consent of a person in a subsequent category is not valid.

(3) Where two or more persons who are not described in the same clause of subsection (1) claim the authority to give or refuse consent under that subsection, the one under the clause occurring first in that subsection prevails.

(4) A person referred to in clauses 1(c) to (l) shall not exercise the authority given by that subsection unless the person

- (a) excepting a spouse, has been in personal contact with the patient over the preceding 12-month period or has been granted a court order to shorten or waive the 12-month period;
- (b) is willing to assume the responsibility for consenting or refusing consent;
- (c) knows of no person of a higher category who is able and willing to make the decision; and
- (d) makes a statement in writing certifying the person's relationship to the patient and the facts and beliefs set out in clauses (a) to (c).

(5) The psychiatrist is responsible for obtaining consent from the appropriate person referred to in subsection (1). 2005, c. 42, s. 38; 2008, c. 8, s. 39.

Basis for decision

39 The substitute decision-maker shall make the decision in relation to specified psychiatric treatment and other related medical treatment

(a) in accordance with the patient's prior capable informed expressed wishes; or

(b) in the absence of awareness of a prior capable informed expressed wish or if following the patient's prior capable informed expressed wish would endanger the physical or mental health or safety of the patient or another person, in accordance with what the substitute decision-maker believes to be in the patient's best interests. 2005, c. 42, s. 39.

Determining best interest

40 In order to determine the best interest of the patient for the purpose of clause 39(b), regard must be had to whether

(a) the mental condition of the patient will be or is likely to be improved by the specified psychiatric treatment;

(b) the mental condition of the patient will improve or is likely to improve without the specified psychiatric treatment;

(c) the anticipated benefit to the patient from the specified psychiatric treatment and other related medical treatment outweighs the risk of harm to the patient; and

(d) the specified psychiatric treatment is the least restrictive and least intrusive treatment that meets the requirements of clauses (a), (b) and (c). 2005, c. 42, s. 40.

Reliance on statement

41 Whoever seeks a person's consent on a patient's behalf is entitled to rely on that person's statement in writing as to the person's relationship with the patient and as to the facts and beliefs mentioned in clauses 38(4)(a) to (c), unless it is not reasonable to believe the statement. 2005, c. 42, s. 41

Review of treatment decisions

42 (1) Where a substitute decision-maker approves or refuses treatment on behalf of a person pursuant to subsection 38(1), the Review Board may review the provision or refusal of consent when requested to do so by the attending psychiatrist or the patient to determine whether the substitute decision-maker has rendered a capable informed consent.

(2) Where the Review Board finds that a substitute decision-maker has not rendered a capable informed consent, the next suitable decision-maker in the hierarchy in subsection 38(1) becomes the substitute decision-maker. 2005, c. 42, s. 42.

CERTIFICATE OF LEAVE

Issuance of certificate

43 (1) Notwithstanding any declaration of involuntary admission or declaration of renewal with respect to an involuntary patient, the psychiatrist of an

involuntary patient may issue a certificate of leave for up to six months, in such form as prescribed by the regulations, allowing the patient to live outside the psychiatric facility subject to such specific written conditions as may be specified in the certificate.

(2) A certificate of leave is not effective without the consent of the involuntary patient's substitute decision-maker.

(3) A patient for whom a certificate of leave is issued shall

(a) attend appointments with the psychiatrist or with any other health professional referred to in the certificate at the times and places scheduled; and

(b) comply with the psychiatric treatment described in the certificate.

(4) A psychiatrist who issues a certificate of leave shall give a copy of it to

(a) the patient;

(b) a substitute decision-maker who consented to the issuance of the certificate under subsection (1);

(c) the chief executive officer; and

(d) any other health professional involved in the treatment plan.

(5) The provisions of this Act respecting an involuntary patient continue to apply in respect of a patient who is subject to a certificate of leave.

(6) This Section does not authorize placing a patient on leave where the patient is subject to detention otherwise than under this Act. 2005, c. 42, s. 43.

Cancellation of leave

44 (1) The psychiatrist, by a certificate of cancellation of leave, may, without notice, cancel the certificate of leave for breach of a condition or if the psychiatrist is of the opinion that

(a) the patient's condition may present a danger to the patient or others; or

(b) the patient has failed to report as required by the certificate of leave.

(2) A certificate of cancellation of leave is sufficient authority, for one month after it is signed, for a peace officer to take the patient named in it into custody and to a psychiatric facility for an involuntary psychiatric assessment. 2005, c. 42, s. 44.

Review respecting breach of condition

45 (1) On application, the Review Board shall review the status of the patient to determine whether or not there has been a breach of a specific written condition of the certificate of leave.

(2) The Review Board, by order, may confirm or rescind the certificate of cancellation of leave. 2005, c. 42, s. 45.

Absence without leave

46 (1) Where an involuntary patient leaves a psychiatric facility when a certificate of leave has not been granted, a peace officer, or other person appointed by the chief executive officer, may apprehend, without warrant, the person named in the order and return that person to the facility.

(2) An involuntary patient who has not been returned within one month after the patient's absence has become known is deemed to have been discharged from the psychiatric facility, unless subject to detention otherwise than under this Act.

(3) A person who is returned to a facility under this Section may be detained for the remainder of the declaration of involuntary admission to which the person was subject when the person's absence was discovered. 2005, c. 42, s. 46.

TREATMENT IN THE COMMUNITY

Community treatment order

47 (1) In this Section, "in the community" means outside of a psychiatric facility.

(2) A psychiatrist may issue a community treatment order respecting a person where the criteria in clause (3)(a) exist.

(3) A community treatment order must

(a) state that the psychiatrist has examined the person named in the community treatment order within the immediately preceding 72 hours and that, on the basis of the examination and any other pertinent facts regarding the person or the person's condition that have been communicated to the psychiatrist, the psychiatrist is of the opinion that

(i) the person has a mental disorder for which the person is in need of treatment or care and supervision in the community and the treatment and care can be provided in the community,

(ii) the person, as a result of the mental disorder,

(A) is threatening or attempting to cause serious harm to self or has recently done so, has recently caused serious harm to self, is seriously harming or is threatening serious harm toward another person or has recently done so, or

(B) is likely to suffer serious physical impairment or serious mental deterioration, or both,

(iii) as a result of the mental disorder, the person does not have the full capacity to make treatment decisions,

(iv) during the immediately preceding two-year period, the person

(A) has been detained in a psychiatric facility for a total of 60 days or longer,

(B) has been detained in a psychiatric facility on two or more separate occasions, or

(C) has previously been the subject of a community treatment order, and

(v) the services that the person requires in order to reside in the community

(A) exist in the community,

(B) are available to the person, and

(C) will be provided to the person;

(b) state that the person's substitute decision-maker has consented to the person being placed on a community treatment order;

(c) state the facts on which the psychiatrist has formed the opinion that the person meets the criteria set out in clause (a);

(d) describe the services that will be provided to the person and the community treatment plan that is recommended for the person;

(e) state that the person is to submit to the medical treatment that is prescribed by the physician and is to attend appointments with the physician or with the responsible individuals identified in clause (f) in the places as scheduled, consistent with good medical practice;

(f) identify the names of the health professionals who will be providing treatment and support services pursuant to clause (d);

(g) show the date on which the examination was made;

(h) be signed by the psychiatrist in the presence of one subscribing witness; and

(i) be in the prescribed form.

(4) For the purpose of determining whether the criteria in sub-clause (3)(a)(iii) are met, Section 18 applies.

(5) Where a community treatment order has been issued under subsection (2), the psychiatrist shall provide a copy of it along with notice of the right to a hearing before the Review Board to

(a) the patient and the patient's substitute decision-maker;

(b) the chief executive officer; and

(c) any other health practitioner or other person who has obligations under the community treatment plan. 2005, c. 42, s. 47.

Community treatment plan

48 A community treatment plan shall contain

- (a) a plan of treatment for the person subject to the community treatment order;
- (b) any conditions relating to the treatment or care and supervision of the person;
- (c) the obligations of the person subject to the community treatment order;
- (d) the obligations of the substitute decision-maker, if any;
- (e) the name of the psychiatrist, if any, who has agreed to accept responsibility for the general supervision and management of the community treatment order;
- (f) the names of all persons or organizations who have agreed to provide treatment or care and supervision under the community treatment plan and their obligations under the plan;
- (g) provision for the naming of another psychiatrist if the psychiatrist who issued the order under subsection 47(2) is unable to carry out that person's responsibilities under the order; and
- (h) any other requirement as prescribed by the regulations. 2005, c. 42, s. 48.

Variation of plan

49 (1) The psychiatrist may vary any part of the community treatment plan.

(2) In the event of a variation pursuant to subsection (1), the psychiatrist shall provide notice to the individuals named in subsection 47(5). 2005, c. 42, s. 49.

Voluntary continuation under plan

50 Where a person on a community treatment order no longer fulfills the criteria in subclause 47(3)(a)(iii), the person may choose to voluntarily continue with the obligations of the community treatment plan until its expiry, but the psychiatrist shall terminate the community treatment order. 2005, c. 42, s. 50.

Expiration of order

51 A community treatment order expires six months after the day it is made unless

- (a) it is renewed in accordance with Section 52; or
- (b) it is terminated earlier in accordance with Section 55, 56 or 57. 2005, c. 42, s. 51.

Renewals of order

52 (1) Where a community treatment order has demonstrated efficacy, the order may be renewed for a period of six months at any time before its expiry and within one month after its expiry.

(2) There are no limits on the number of renewals under subsection (1). 2005, c. 42, s. 52.

Responsibility of issuing psychiatrist

53 (1) A psychiatrist who issues or renews a community treatment order is responsible for the general supervision and management of the order.

(2) Where the psychiatrist who issues or renews a community treatment order is absent or, for any other reason, is unable to carry out the psychiatrist's responsibilities under subsection (1) or under Section 55, 56 or 57, the psychiatrist may appoint another psychiatrist to act in the psychiatrist's place, with the consent of that other psychiatrist. 2005, c. 42, s. 53.

No liability where belief is reasonable

54 (1) Where the psychiatrist who issues or renews a community treatment order or a psychiatrist appointed under subsection 53(2) believes, on reasonable grounds and in good faith, that the persons who are responsible for providing treatment or care and supervision under a community treatment plan are doing so in accordance with the plan, the psychiatrist is not liable for any default or neglect by those persons in providing the treatment or care and supervision.

(2) Where a person who is responsible for providing an aspect of treatment or care and supervision under a community treatment plan believes, on reasonable grounds and in good faith, that the psychiatrist who issued or renewed the community treatment order or a psychiatrist appointed under subsection 53(2) is providing treatment or care and supervision in accordance with the plan, the person is not liable for any default or neglect by the psychiatrist in providing the treatment or care and supervision. 2005, c. 42, s. 54.

Review of condition

55 (1) At the request of the substitute decision-maker for a person who is a subject to a community treatment order, the psychiatrist who issued or renewed the order shall review the person's condition to determine if the person is able to continue to live in the community without being subject to the order.

(2) The psychiatrist may refuse to review the file of a patient upon request of the patient at any time during the three months following the date the file was previously reviewed.

(3) Where the psychiatrist determines, upon reviewing the person's condition, that the circumstances described in subclauses 47(3)(a)(i), (ii) and (iii) no longer exist, the psychiatrist shall

- (a) terminate the community treatment order;
- (b) notify the person that the person may live in the community without being subject to the community treatment order; and
- (c) notify the persons referred to in subsection 47(5) that the community treatment order has been terminated. 2005, c. 42, s. 55.

Failure to comply with order

56 (1) Where a psychiatrist who issued or renewed a community treatment order has reasonable cause to believe that the person subject to the order has failed in a substantial or deleterious manner to comply with that person's obligations under clause 48(c), the psychiatrist shall request a peace officer to take the person into custody and promptly convey the person to the psychiatrist for a medical examination.

(2) The psychiatrist shall not make a request to a peace officer under subsection (1) unless

(a) the psychiatrist has reasonable cause to believe that the criteria set out in subclauses 47(3)(a)(i), (ii) and (iii) continue to be met; and

(b) reasonable efforts have been made to

(i) locate the person,

(ii) inform the person's substitute decision-maker of the failure to comply,

(iii) inform the substitute decision-maker of the possibility that the psychiatrist may make a request under subsection (1) and of the possible consequences, and

(iv) provide reasonable assistance to the person to comply with the terms of the order.

(3) A request under subsection (1) is sufficient authority, for 30 days after it is issued, for a peace officer to take the person named in it into custody and convey the person to a psychiatrist who shall examine the person to determine whether

(a) the person should be released without being subject to a community treatment order;

(b) the psychiatrist should issue another community treatment order if the person's substitute decision-maker consents to the community treatment plan; or

(c) the psychiatrist should conduct a psychiatric assessment to determine if the person should be admitted as an involuntary patient under a declaration of involuntary admission. 2005, c. 42, s. 56.

Where services become unavailable

57 (1) Where the services required for a community treatment order become unavailable, the psychiatrist shall

(a) terminate the community treatment order;

(b) notify the person of the termination of the order and the requirement for the psychiatrist to review the person's condition pursuant to subsection (2); and

(c) notify the persons referred to in subsection 47(5) that the community treatment order has been terminated.

(2) Within 72 hours after receipt of the notice, the psychiatrist shall review the person's condition to determine if the person is able to continue to live in the community without being subject to the order.

(3) Where the person subject to the community treatment order fails to permit the psychiatrist to review the person's condition and the psychiatrist has reasonable cause to believe that the criteria set out in subclauses 47(3)(a)(i), (ii) and (iii) continue to be met, the psychiatrist may, within the 72-hour period, request a peace officer to take the person into custody and promptly convey the person to a psychiatric facility for an involuntary psychiatric assessment.

(4) A request under subsection (3) is sufficient authority, for 30 days after it is issued, for a peace officer to take the person named in it into custody and then promptly convey the person to the psychiatrist who made the request.

(5) The psychiatrist shall promptly examine the person to determine whether

(a) the person should be released; or

(b) the psychiatrist should conduct a psychiatric assessment to determine if the person should be admitted as an involuntary patient under a declaration of involuntary admission. 2005, c. 42, s. 57.

Application to Review Board respecting order

58 (1) A person who is subject to a community treatment order or the person's substitute decision-maker may apply to the Review Board to inquire into whether the criteria for issuing or renewing a community treatment order have been met.

(2) An application pursuant to subsection (1) may be made each time a community treatment order is issued or renewed.

(3) When a community treatment order is renewed and on the occasion of every second renewal thereafter, the person is deemed to have applied to the Review Board unless an application has already been made in the preceding month. 2005, c. 42, s. 58.

Review by Minister

59 (1) The Minister shall undertake a review of the following matters:

(a) whether community treatment orders were or were not used during the review period;

(b) the effectiveness of community treatment orders during the review period;

(c) the methods used to evaluate the outcome of any treatment used under community treatment orders; and

(d) any further matters prescribed by the regulations.

(2) The review must be undertaken during the sixth year after the date on which Sections 47 to 59 come into force utilizing data collected on community treatment orders for the entire five-year period.

(3) The Minister shall make available to the public for inspection, and table in the House of Assembly the written report of the review completed under subsection (1). 2005, c. 42, s. 59.

PATIENT-ADVISOR SERVICE AND PATIENT RIGHTS

Regulations designating services and qualifications

60 (1) The Governor in Council may make regulations designating an organization as a patient-advisor service and the qualifications of a patient advisor.

(2) A patient-advisor service or a patient advisor in the employment of such a service or organization designated under subsection (1) shall not be employed by or have privileges at a health authority, as defined by the *Health Authorities 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*. 2005, c. 42, s. 60; 2014, c. 32, s. 136.

Functions and duties of patient-advisor service

61 (1) The patient-advisor service may offer advice and assistance to

- (a) a person who is undergoing an involuntary psychiatric assessment;
- (b) an involuntary patient who is subject to a declaration of involuntary admission;
- (c) a patient who is on a community treatment order or an involuntary patient who is subject to a certificate of leave; or
- (d) a substitute decision-maker of a patient referred to in clause (a), (b) or (c).

(2) A patient-advisor service shall

- (a) meet as soon as possible with an involuntary patient, unless the patient objects, and the patient's substitute decision-maker, unless the substitute decision-maker objects;
- (b) explain the significance of the situation to the patient;
- (c) identify available options;
- (d) communicate information in a neutral, non-judgemental manner;
- (e) assist the patient in making application to the Review Board;
- (f) assist in obtaining legal counsel, if requested, and applying for legal aid;

- (g) accompany the patient to Review Board hearings, unless the patient or the substitute decision-maker objects;
- (h) assist in identifying alternative decision-making as outlined in this Act if the patient lacks capacity; and
- (i) maintain patient confidentiality. 2005, c. 42, s. 61.

Notice to service

62 A chief executive officer shall ensure that the patient-advisor service is given notice of

- (a) a decision to admit a person as an involuntary patient;
- (b) a decision to change the status of a voluntary patient to that of an involuntary patient or to change the status of an involuntary patient to that of a voluntary patient;
- (c) the filing of each declaration of renewal in respect of an involuntary patient;
- (d) the issuance of a community treatment order;
- (e) the issuance of a certificate of leave; or
- (f) an application to the Review Board in respect of an involuntary patient. 2005, c. 42, s. 62.

Right to meet and confer

63 (1) Subject to the wishes of an involuntary patient or a substitute decision-maker, a patient advisor has the right at all reasonable times to meet and confer with an involuntary patient.

(2) Notwithstanding subsection (1), an involuntary patient may not object to a substitute decision-maker meeting with a patient advisor and vice versa. 2005, c. 42, s. 63.

Rights and privileges not to be deprived

64 A person who has been detained under a certificate for involuntary psychiatric assessment, a patient who has been admitted to a psychiatric facility by a declaration of involuntary admission or a patient who is the subject of a community treatment order shall not be deprived of any right or privilege enjoyed by others by reason of receiving or having received mental health services, subject to those rights prescribed by the regulations. 2005, c. 42, s. 64.

REVIEW BOARD**Appointment of Review Board**

65 (1) The Governor in Council shall establish a Review Board to hear and consider applications under this Act.

(2) The Governor in Council shall appoint the members of the Review Board from a roster of

(a) psychiatrists who are members pursuant to the *Medical Act*, one of whom must be a psychiatrist with a specialized knowledge of adolescent psychiatry;

(b) lawyers who are barristers pursuant to the *Legal Profession Act* and who express an interest in mental health issues; and

(c) persons who do not meet the criteria of clauses (a) and (b) and who express an interest in mental health issues and preferably are or have been a consumer of mental health services.

(3) The Governor in Council shall determine the term of these appointments.

(4) A member of the Review Board is eligible for reappointment after the expiry of the member's appointment.

(5) The Governor in Council shall designate one of the members of the Review Board appointed pursuant to clause (2)(b) as Chair of the Review Board. 2005, c. 42, s. 65.

Panels of Review Board

66 (1) A panel of at least three members of the Review Board must be appointed by the Chair of the Review Board or the Chair's designate to hold a review pursuant to Section 68.

(2) A panel may exercise all the jurisdiction and powers of the Review Board.

(3) A panel must consist of at least one member appointed pursuant to each of clauses 65(2)(a), (b) and (c).

(4) Where a review concerns a patient who is under 19 years of age, the panel should preferably include a psychiatrist who specializes in adolescent psychiatry.

(5) The Chair of the Review Board or the Chair's designate shall appoint a chair of the panel, who must be a member of the Review Board appointed pursuant to clause 65(2)(b).

(6) A quorum for a panel consists of at least one member appointed pursuant to each of clauses 65(2)(a), (b) and (c). 2005, c. 42, s. 66.

Conflict of interest or bias

67 (1) A member of the Review Board is not eligible to sit on a panel for an application relating to a patient if the member

(a) is the patient's spouse or common-law partner;

(b) is related by blood or marriage to the patient;

(c) is a psychiatrist or a physician who is treating or has treated the patient;

(d) is an officer, employee or staff member of the psychiatric facility in which the person is being treated;

(e) is a lawyer who is acting for or has acted for the patient or the psychiatric facility in which the person is being treated; or

(f) has a close personal or professional relationship with a person referred to in clauses (a) to (e).

(2) Where there is a reasonable apprehension of bias, a member of the Review Board shall cease to sit on the panel.

(3) A member of the Review Board who has sat on a *Criminal Code* (Canada) review board hearing for a patient shall not sit as a member on a panel of the Review Board for that patient. 2005, c. 42, s. 67.

Applications for review

68 (1) In addition to the mandatory reviews provided for in Section 37, the Review Board shall consider an application to review

(a) a declaration of involuntary admission or a declaration of renewal;

(b) a declaration of competency for involuntary patients pursuant to subsection 20(1) of the *Hospitals Act*;

(c) pursuant to subsection 42(1), whether a capable informed consent by a substitute decision-maker has been rendered;

(d) a community treatment order or a renewal of a community treatment order; or

(e) a certificate of cancellation of leave.

(2) In considering an application pursuant to subsection (1), the Review Board may make such recommendations to the chief executive officer as it sees fit respecting the treatment or care of a patient.

(3) Notwithstanding subsection (1), the Review Board may refuse to review the file of a patient upon request of the patient at any time during the three months following the date the file was previously reviewed.

(4) A request for the Review Board to conduct a review pursuant to subsection (1) may be initiated by

(a) the patient;

(b) a substitute decision-maker;

(c) a guardian appointed by law;

(d) a person who has been authorized to give consent under the *Personal Directives Act*;

(e) a person authorized by the patient to act on the patient's behalf;

(f) the chief executive officer;

(g) the Minister; or

(h) the Review Board where it believes it is in the patient's interest to have a review.

(5) An application pursuant to this Section must be in the prescribed form. 2005, c. 42, s. 68.

Conduct of hearings

69 (1) The Review Board shall conduct its hearings for the review of a patient's file pursuant to Sections 37 and 68 as full oral hearings.

(2) A hearing must begin as soon as reasonably possible after an application is received but no later than 21 calendar days from the receipt of the application.

(3) In every application to the Review Board, the patient or any person who has applied on behalf of the patient, the patient's substitute decision-maker and the attending psychiatrist are parties and the chief executive officer is entitled to be a party.

(4) The Review Board may add as a party any person who, in the opinion of the Review Board, has a substantial interest in matters under review. 2005, c. 42, s. 69.

Notice

70 (1) In this Section, "clear days" does not include weekends or statutory holidays.

(2) The Review Board shall give three clear days written notice of the application to

- (a) every party;
- (b) every person who is entitled to be a party;
- (c) the patient advisor if no one has been authorized to act on behalf of the involuntary patient; and
- (d) to any person who, in the opinion of the Review Board, has a substantial interest in the subject-matter of the application.

(3) The notice period referred to in subsection (2) may be waived by the parties. 2005, c. 42, s. 70.

Closed hearing

71 (1) A hearing before the Review Board is closed except for the parties, the patient advisor, any person having material evidence, any person required for security and any other person the Review Board determines.

(2) Where the patient is unable or unwilling to attend a hearing before the Review Board and the patient has not appointed someone to act on the patient's behalf, the Review Board shall appoint a representative to attend the hearing and act on behalf of the patient. 2005, c. 42, s. 71.

Entitlement to representation

72 Every party is entitled to be represented by counsel or an agent in a hearing before the Review Board. 2005, c. 42, s. 72.

Evidence

73 (1) Every party is entitled to present such evidence as the Review Board considers relevant and to question witnesses.

(2) Every party, where possible, must be given an opportunity to examine and to copy, before the hearing, any recorded evidence that will be produced or any report the contents of which will be given in evidence at the hearing. 2005, c. 42, s. 73.

Powers of Review Board during hearing

74 (1) The Review Board shall inform itself fully of the facts by means of the hearing and, for this purpose, the Review Board may require the attendance of witnesses and the production of documents in addition to the witnesses called and documents produced by the parties.

(2) For the purpose of a hearing, the Review Board may arrange for the patient to be examined by a second psychiatrist. 2005, c. 42, s. 74.

Public Inquiries Act

75 Members of the Review Board have the powers and privileges of commissioners appointed under the *Public Inquiries Act*. 2005, c. 42, s. 75.

Decision

76 (1) Within 10 days after each review, the Review Board shall forward a written decision, setting out fully the conclusion of the Review Board, to

- (a) the person requesting the review;
- (b) the patient and the patient's representative;
- (c) the patient's substitute decision-maker;
- (d) the attending psychiatrist;
- (e) the chief executive officer; and
- (f) the Minister.

(2) The written decision referred to in subsection (1) may make an order as to the following:

- (a) where an application is to cancel a declaration of involuntary admission or a declaration of renewal, the Review Board may cancel the declaration and change the patient's status to that of a voluntary patient or may refuse to do so;
- (b) where the application is to review a physician's opinion that a patient is not competent to handle their personal affairs, the Review Board may cancel the declaration of competency or may refuse to do so;

(c) where the application is to review whether a substitute decision-maker made a capable informed consent, the Review Board may appoint another substitute decision-maker pursuant to Section 38 or may refuse to do so;

(d) where the application is to review a certificate of leave, the Review Board may revoke the certificate of leave and allow the patient to live in the community without being subject to the certificate of leave or may refuse to do so;

(e) where the application is to review a certificate of cancellation of leave, the Review Board may confirm the cancellation or may refuse to do so; or

(f) where the application is to review a community treatment order, the Review Board may revoke the community treatment order and allow the patient to live in the community without being subject to the community treatment order or may refuse to do so. 2005, c. 42, s. 76.

Onus of proof

77 The onus of proof during a Review Board hearing is borne by the psychiatric facility. 2005, c. 42, s.77.

Standard of proof

78 In a proceeding under this Act before the Review Board, the standard of proof is proof on the balance of probabilities. 2005, c. 42, s. 78.

Appeal

79 (1) A party may appeal on any question of law from the findings of the Review Board to the Nova Scotia Court of Appeal and any findings of fact made by the Review Board are binding on the Court.

(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 the party receives the final decision or order of the Review Board.

(3) 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.

(4) Where a matter is appealed to the Nova Scotia Court of Appeal pursuant to this Section, the decision of the Review Board 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. 2005, c. 42, s. 79.

Annual report

80 (1) Each year the Review Board shall make a report to the Minister of its activities during the preceding year.

(2) The Minister shall table the report in the Assembly within 20 days after it is made to the Minister if the Assembly is then sitting and, if it is not

then sitting, within 20 days of the commencement of the next sitting of the Assembly.

(3) The annual report of the Review Board to the Minister shall not contain any personal information of patients. 2005, c. 42, s. 80.

GENERAL

No action lies

81 No action lies or shall be instituted against any person who performs a duty, exercises a power or carries out a responsibility pursuant to this Act or the regulations for any loss or damage suffered by any person by reason of anything done in good faith, caused or permitted or authorized to be done, attempted to be done or omitted to be done by that person in the performance or supposed performance of that duty, the exercise or supposed exercise of that power or the carrying out or supposed carrying out of that responsibility. 2005, c. 42, s. 81.

Application of Personal Health Information Act and Hospitals Act

82 (1) The *Personal Health Information Act* applies to the records of a patient in a psychiatric facility.

(2) For greater certainty, any issues dealing with an involuntary patient's competency to administer the patient's estate must be dealt with pursuant to the *Hospitals Act*. 2005, c. 42, s. 82; 2010, c. 41, s. 114.

Regulations

- 83 (1)** The Governor in Council may make regulations
- (a) designating psychiatric facilities;
 - (b) designating patient-advisor services;
 - (c) respecting patient rights;
 - (d) prescribing further items to be included in a community treatment plan pursuant to clause 48(h);
 - (e) respecting further items for the review of community treatment orders pursuant to clause 59(1)(d);
 - (f) prescribing the manner in which applications may be made to the Review Board;
 - (g) governing proceedings of the Review Board;
 - (h) respecting forms and providing for their use;
 - (i) defining any word or expression used but not defined in this Act;
 - (j) further defining or redefining any word or expression defined in this Act;
 - (k) 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*, 2005, c. 42, s. 83.
