

BILL NO. 25

(as passed, with amendments)



*2nd Session, 58th General Assembly
Nova Scotia
50 Elizabeth II, 2001*

Government Bill

Justice Administration Amendment (2001) Act

CHAPTER 5 OF THE ACTS OF 2001

The Honourable Michael G. Baker
Minister of Justice

[First Reading](#): April 10, 2001

Second Reading: May 25, 2001

[Third Reading](#): June 1, 2001 (WITH COMMITTEE AMENDMENTS)

Royal Assent: June 1, 2001



**An Act Respecting the
Administration of Justice**

Be it enacted by the Governor and Assembly as follows:

1 This Act may be cited as the *Justice Administration Amendment (2001) Act*.

PART I

HEALTH ACT

2 Clause 2(aa) of Chapter 195 of the Revised Statutes, 1989, the *Health Act*, as enacted by Chapter 29 of the Acts of 2000, is amended by striking out ", neither of them being a spouse" in the fourth and fifth lines.

3 Subsection 136(3) of Chapter 195 is repealed and the following subsection substituted:

(3) Where a person is not capable of giving consent in respect of the person's records, consent may be given by the guardian of the person or, if there is no guardian, by the spouse or common-law partner of such person if the spouse or common-law partner is cohabiting with the person in a conjugal relationship or, if there is no spouse or common-law partner cohabiting with the person in a conjugal relationship, by the next of kin of that person or, if there is no next of kin, by the Public Trustee.

PART II

HOSPITALS ACT

4 Subsection 54(2) of Chapter 208 of the Revised Statutes, 1989, the *Hospitals Act*, as amended by Chapter 29 of the Acts of 2000, is further amended by adding ", if the spouse or common-law partner is cohabiting with the person in a conjugal relationship," immediately after "partner" the first time it appears in the sixth line.

PART III

INTERPRETATION ACT

5 Chapter 235 of the Revised Statutes, 1989, the *Interpretation Act*, is amended by adding immediately after Section 22 the following Section:

22A (1) Where a statute or a part of a statute, whether enacted before or after the coming into force of this Section,

(a) does not come into force until proclaimed in force; and

(b) has not come into force within five years after the statute received Royal Assent or, where the statute has been amended, after the latest amendment received Royal Assent,

that statute or part of the statute, as the case may be, is repealed five years after the statute or latest amendment, as the case may be, received Royal Assent.

(2) Notwithstanding subsection (1), where a statute or a part of a statute

(a) would, but for this subsection, be repealed by subsection (1) within one year after this Section comes into force; and

(b) has not come into force within one year after this Section comes into force,

that statute or part of a statute, as the case may be, is repealed one year after this Section comes into force.

(3) Notwithstanding subsections (1) and (2), at any time before the expiry of a period referred to in subsection (1) or (2) or the expiry of an extension of that period pursuant to this subsection, the Governor in Council may by

order extend or further extend that period by up to one year with respect to a statute or part of a statute.

(4) For greater certainty,

(a) where part of a statute has come into force by proclamation and another part of that statute does not come into force until proclaimed in force, that other part is still subject to subsections (1) and (2); and

(b) where a statute or part of a statute has been proclaimed in force for part of the Province, subsections (1) and (2) do not apply to that statute or part of a statute, as the case may be.

PART IV

JUSTICE AND ADMINISTRATION REFORM (2000) ACT

6 Section 98 of Chapter 28 of the Acts of 2000, the *Justice and Administration Reform (2000) Act*, is amended by striking out "the *Barrister and Solicitors Act*" in the ninth line and substituting "any enactment or rule pursuant to which a taxing master had jurisdiction to carry out such taxations immediately before the repeal of that Act".

PART V

LUNENBURG COUNTY COURT HOUSES

7 Chapter 115 of the Acts of 1893, *An Act to settle the difficulties that have arisen with regard to Court Houses in the County of Lunenburg*, is repealed.

8 (1) The grantee in a deed dated the third day of October, 1893, from the Trustees of Common Lands to the County of Lunenburg, registered in the registry of deeds in Bridgewater in Book 49 at page 164 is deemed to be the Municipality of the District of Lunenburg and that deed is deemed to have conveyed all the right, title and interest of the Trustees of the Common Lands to the Municipality

(2) For greater certainty, subsection (1) has effect on and after October 3, 1893.

(3) Section 2 of Chapter 77 of the Acts of 1951 does not apply to the lands referred to in subsection (1) and the lands are not subject to any trust.

(4) No conveyance of the lands referred to in subsection (1) is, by the operation of Section 8 of Chapter 115 of the Acts of 1893, invalid by reason only that the conveyance was not made pursuant to a disposition of the lands at public auction or by tender.

(5) This Section does not affect the rights acquired by any person from a judgment or order given or made in litigation or proceedings commenced on or before April 10, 2001.

9 (1) The following lands are vested absolutely in the Town of Lunenburg in fee simple:

All those lots, pieces, or parcels of land situate in Lunenburg in the County of Lunenburg and Province of Nova Scotia contained within the following perimeter boundaries:

Bounded northerly by Townsend Street, easterly by Prince Street, southerly by Cumberland Street and westerly by Duke Street;

subject, however, to certain leases granted by the Town of Lunenburg that were in effect immediately before April 10, 2001.

(2) The lands referred to in subsection (1) including, without limiting the foregoing, the Court House building lying between Cumberland Street and Townsend Street, are not subject to any trust.

(3) Without restricting the foregoing, the Court House building and all other fixtures on the lands referred to in subsection (1) are vested absolutely in the Town of Lunenburg in fee simple and are the sole property of the Town save

for the Lunenburg Heritage Society Band Stand which is the property of the Lunenburg Heritage Society on lands leased from the Town.

PART VI

OFFSHORE PETROLEUM RESOURCES ACT

10 Section 81 of Chapter 8 of the Acts of 1987, the *Offshore Petroleum Resources Act*, is amended by adding "(1)" immediately after the Section number and adding the following subsection:

(2) Section 22A of the *Interpretation Act* does not apply to this Act.

PART VII

OIL AND GAS OPERATIONS (NOVA SCOTIA) ACT

11 Section 70 of Chapter 10 of the Acts of 1987, the *Oil and Gas Operations (Nova Scotia) Act*, is amended by adding "(1)" immediately after the Section number and adding the following subsection:

(2) Section 22A of the *Interpretation Act* does not apply to this Act.

PART VIII

PROBATE ACT

12 Subsection 37(1) of Chapter 31 of the Acts of 2000, the *Probate Act*, is amended by striking out "registrar" in the last line and substituting "court".

13 Subsections 44(2) and (3) of Chapter 31 are repealed and the following subsections substituted:

(2) Sections 45 to 55 do not apply with respect to

(a) real property that devolves under a will that was executed; or

(b) real property that devolves in an intestacy where the intestate dies,
before those Sections come into force.

(3) Sections 50 to 64 of Chapter 359 of the Revised Statutes, 1989, the *Probate Act*, apply with respect to

(a) real property that devolves under a will that was executed; and

(b) real property that devolves in an intestacy where the intestate dies,
before Sections 45 to 55 come into force.

14 Chapter 31 is further amended by adding immediately after Section 44 the following Section:

44A Nothing in Sections 45 to 55 limits the powers, rights and immunities conferred on a personal representative by a will.

15 (1) Subsection 46(6) of Chapter 31 is amended by striking out all that portion of the subsection immediately following "property" in the fourth line to the end of the subsection and substituting a period.

(2) Subsection 46(8) of Chapter 31 is repealed.

16 Section 47 of Chapter 31 is amended by

- (a) adding "only" immediately before "the" in the first line; and
- (b) adding "of the deceased person" immediately after "property" in the third line.

17 (1) Subsection 50(1) of Chapter 31 is amended by

- (a) striking out "A" in the first line and substituting "Subject to any will, a"; and
- (b) adding "to the real property" immediately after "entitled" in the fifth line.

(2) Subsection 50(2) of Chapter 31 is amended by adding "and any will" immediately after "Act" in the first line.

(3) Subsection 50(3) of Chapter 31 is amended by

- (a) striking out "Where" in the first line and substituting "Except where otherwise provided in any will, where"; and
- (b) striking out "the sale is in the interest and to the advantage of the estate of the deceased and the persons beneficially interested in the estate" in the eleventh, twelfth, thirteenth and fourteenth lines and substituting "it is just and appropriate to do so".

(4) Subsection 50(6) of Chapter 31 is repealed.

18 Section 51 of Chapter 31 is repealed and the following Section substituted:

51 Except as otherwise provided in a will, the personal representative may convey or divide the real property of a deceased person to or among the persons beneficially interested with the concurrence of

- (a) each person beneficially interested in the real property; and
- (b) the guardian of each infant or mentally incompetent person who is beneficially interested in the real property.

19 (1) Clause 52(1)(c) of Chapter 31 is amended by

- (a) striking out "or for the payment of taxes on the real property to be mortgaged" in the third and fourth lines;
- (b) striking out "court" in the fifth line and substituting "Supreme Court"; and
- (c) striking out "the payment of other taxes," in the fifth line.

(2) Subsection 52(2) of Chapter 31 is amended by striking out "or taxes" in the third line.

20 (1) Subsection 53(1) of Chapter 31 is amended by striking out "court" in the second last line and substituting "Court".

(2) Subsection 53(2) of Chapter 31 is amended by striking out "court" in the ninth and in the second last lines and substituting in each case "Court".

21 (1) Subsection 54(1) of Chapter 31 is amended by striking out "A" in the first line and substituting "Notwithstanding any other provision of this Act, a".

(2) Section 54 is further amended by adding immediately after subsection (1) the following subsection:

(1A) Where, on a sale of real property pursuant to Section 50 or on a conveyance or division of real property pursuant to Section 51, a person relies, in good faith, on an affidavit of the personal representative verifying that

the sale complies with Section 50 or the conveyance or division complies with Section 51, without actual notice to the contrary, the affidavit is sufficient proof that the sale complies with Section 50 or that the conveyance or division complies with Section 51, as the case may be, and neither the sale, the conveyance nor the division or any instrument that implements the sale, conveyance or division is invalid by reason only of a failure to comply with Section 50 or 51, as the case may be.

22 Section 55 of Chapter 31 is amended by striking out "court" in the second last line and substituting "Court".

23 Section 56 of Chapter 31 is repealed.

24 Subsection 64(2) of Chapter 31 is amended by striking out "may" in the first line and substituting "shall".

25 Subsection 70(2) of Chapter 31 is amended by adding ", or such longer period as the court, on the application of the personal representative, may allow" immediately after "grant" in the second line.

26 Chapter 31 is further amended by adding immediately before Section 85 the following Section:

84A Insurance money, as defined in the *Insurance Act*, that is, under Section 198 of that Act, not part of the estate of a deceased person by reason of a designation within the meaning of that Section made by the deceased person is not, for the purpose of Sections 85, 86 and 87 part of the assets of the deceased person or the deceased person's estate and shall not be included in the value of the estate of the deceased person for the purpose of calculating the tax payable to the registrar under those Sections.

27 (1) Subsection 85(2) of Chapter 31 is amended by striking out "in the Province" in the second line.

(2) Subsection 85(4) of Chapter 31 is amended by striking out "in the Province" in the eleventh line.

28 Subsection 86(2) of Chapter 31 is amended by striking out "in the Province" in the second line.

29 Subsection 87(2) of Chapter 31 is amended by striking out "in the Province" in the second line.

30 Section 91 of Chapter 31 is amended by striking out all that portion of that Section immediately following "any" in the fourth line to the end of the Section and substituting a period.

31 Section 105 of Chapter 31 is amended by striking out "A" wherever it appears in that Section and substituting in each case "B".

32 Chapter 31 is further amended by adding immediately after Section 106 the following Section:

106A (1) In this Section, "grant" means a grant of probate or letters of administration of the estate of a deceased person whether granted for general, special or limited purposes and includes administration with the will annexed, a re-sealing of probate or administration and ancillary probate or ancillary administration.

(2) Subject to subsection (3), this Act does not apply with respect to estates in which the grant was made before the coming into force of this Section and Chapter 238 of the Revised Statutes, 1989, the *Probate Act*, continues to apply with respect to those estates as if it had not been repealed.

(3) Sections 85 to 89 apply with respect to the estates of deceased persons in which the grant was made before, on or after the coming into force of this Section.

33 Section 108 of Chapter 31 is amended by striking out "2" in the first line and substituting "1 and 3".

PART IX

PROVINCIAL COURT ACT

34 Clause 21E(1)(b) of Chapter 238 of the Revised Statutes, 1989, the *Provincial Court Act*, as enacted by Chapter 7 of the Acts of 1998, is amended by adding ", or payments for a part of a day," immediately after "payments" in the second line.

PART X

SUMMARY PROCEEDINGS ACT

35 Section 4A of Chapter 450 of the Revised Statutes, 1989, the *Summary Proceedings Act*, as enacted by Chapter 4 of the Acts of 2000, is amended by striking out "twenty" in the last line and substituting "thirty".

36 Chapter 450 is further amended by adding immediately after Section 4A the following Section:

4B (1) Interest is payable on all fines, victim-fine surcharges and court costs payable to the Province under any enactment that are imposed after the coming into force of this Section and that are unpaid for more than ninety days.

(2) Interest is payable on all fines, victim-fine surcharges and court costs payable to the Province under any enactment that are outstanding upon the coming into force of this Section and remain unpaid one hundred and eighty days after this Section comes into force.

(3) The Governor in Council may determine the rate of interest for the purpose of subsections (1) and (2).

37 (1) Subsection 8(6) of Chapter 450, as amended by Chapter 4 of the Acts of 2000, is further amended by striking out "twenty" in the third line and substituting "thirty".

(2) Clause 8(15)(a) of Chapter 450, as amended by Chapter 18 of the Acts of 1994-95 and Chapter 4 of the Acts of 2000, is further amended by striking out "twenty" in the fifth and in the last lines and substituting in each case "thirty".

38 Subsection 8A(7) of Chapter 450, as enacted by Chapter 18 of the Acts of 1994-95 and amended by Chapter 4 of the Acts of 2000, is further amended by striking out "twenty" in the second and third lines and substituting "thirty".

39 Subsection 9(5) of Chapter 450, as amended by Chapter 4 of the Acts of 2000, is further amended by striking out "twenty" in the second line and substituting "thirty".

PART XI

VITAL STATISTICS ACT

40 Sections 16A and 16B of Chapter 494 of the Revised Statutes, 1989, the *Vital Statistics Act*, are repealed.

41 (1) Clause 24(1)(a) of Chapter 494 is amended by striking out "or marriage" in the first line and substituting ", marriage or domestic partnership".

(2) Subsection 24(2) of Chapter 494 is amended by striking out "or marriage" in the first line and substituting ", marriage or domestic partnership".

42 Subsection 25(2) of Chapter 494 is amended by striking out "or marriage" in the first line and substituting ", marriage or domestic partnership".

43 Subsection 37(12) of Chapter 494, as enacted by Chapter 29 of the Acts of 2000, is amended by

(a) striking out clauses (b) and (c); and

(b) relettering clauses (d) and (e) as (b) and (c).

44 (1) Subsection 40(1) of Chapter 494, as amended by Chapter 29 of the Acts of 2000, is further amended by adding ", domestic partnership" immediately after "marriage" in the last line.

(2) Subsection 40(3) of Chapter 494, as amended by Chapter 29 of the Acts of 2000, is further amended by adding ", termination of domestic partnership" immediately after "partnership" in the third line.

45 Section 48 of Chapter 494, as amended by Chapter 29 of the Acts of 2000, is further amended by adding ", terminations of domestic partnerships" immediately after "partnerships" in the third line.

46 Subsection 51(1) of Chapter 494, as amended by Chapter 8 of the Acts of 1998 and Chapter 29 of the Acts of 2000, is further amended by

(a) striking out the period at the end of clause (p) and substituting a semicolon; and

(b) adding immediately after clause (p) the following clause:

(q) defining any word or expression used but not defined in this Act.

47 (1) Subsection 54(1) of Chapter 494, as enacted by Chapter 29 of the Acts of 2000, is amended by striking out the period at the end of clause (b) and substituting a comma and adding "and the Registrar shall, if satisfied of its truth and sufficiency, register the domestic partner declaration." immediately after clause (b).

(2) Subsection 54(2) of Chapter 494, as enacted by Chapter 29 of the Acts of 2000, is amended by

(a) adding immediately after clause (h) the following clause:

(i) a spouse or a person who is married under the *Municipal Government Act*;

(b) relettering clauses (i) to (k) as (j) to (l);

(c) striking out clause (l) and substituting the following clauses:

(m) a spouse under the *Public Service Superannuation Act*;

(n) a spouse under the *Teachers' Pension Act*;

(o) a widow or widower under the *Testators' Family Maintenance Act*;

(p) a wife or husband under the *Wills Act*;

(q) a spouse under the *Workers' Compensation Act*,

and

(d) striking out the last two lines and substituting "and the domestic partners, the registration of their domestic-partner declaration and their domestic partnership are subject to and give rise to the same operations of law that relate to those classes of persons under those Acts and those Acts apply *mutatis mutandis* with respect to the domestic partners, the registration of their domestic-partner declaration and their domestic partnership."

(3) Subsection 54(3) of Chapter 494 is repealed and the following subsection substituted:

(3) The Governor in Council may make regulations adding to the list in subsection (2) of classes of persons under Provincial statutes to which domestic partners have rights and obligations upon registration of a domestic-partner declaration and specifying those rights and obligations.

48 (1) Clause 55(1)(d) of Chapter 494 is repealed and the following clause substituted:

(d) the parties have an agreement registered with the court pursuant to Section 52 of the *Maintenance and Custody Act*.

(2) Subsection 55(2) of Chapter 494, as enacted by Chapter 29 of the Acts of 2000, is amended by striking out "(a)" in the first line and substituting "(b)".

(3) Subsection 55(3) of Chapter 494, as enacted by Chapter 29 of the Acts of 2000, is amended by striking out "former spouses after a marriage has ended by separation, separation agreement or court order" in the seventh, eighth and ninth lines and substituting "spouses by separation, separation agreement, court order or death".

49 Clause 57(d) of Chapter 494 is repealed and the following clause substituted:

(d) a copy of an agreement showing proof of registration with the court pursuant to Section 52 of the *Maintenance and Custody Act*.

PART XII

EFFECTIVE DATES

50 (1) Parts I, II, X, except Section 36, and XI have effect on and after June 4, 2001.

(2) Section 31 has effect on and after March 31, 2001.

(3) Sections 5, 10 to 25, 30, 32 and 36 come into force on such day as the Governor in Council orders and declares by proclamation.

(4) Sections 26 to 29 and 33 have effect on and after November 30, 2000.

(5) For greater certainty, Section 2 of Chapter 31 has effect on and after November 30, 2000.

