

BILL NO. 115

(as passed, with amendments)



*2nd Session, 58th General Assembly
Nova Scotia
51 Elizabeth II, 2002*

Government Bill

Justice Administration Amendment (2002) Act

CHAPTER 10 OF THE ACTS OF 2002

The Honourable Michael G. Baker, Q.C.
Minister of Justice

[First Reading](#): April 12, 2002 (LINK TO BILL AS INTRODUCED)

Second Reading: May 7, 2002

[Third Reading](#): May 28, 2002 (WITH COMMITTEE AMENDMENTS)

Royal Assent: May 30, 2002



**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 (2002) Act*.

PART I

CONDOMINIUM ACT

2 Chapter 85 of the Revised Statutes, 1989, the *Condominium Act*, as amended by Chapter 33 of the Acts of 1996, Chapter 28 of the Acts of 1998, Chapter 5 of the Acts of 1999 and Chapter 6 of the Acts of 2001, is further amended by adding immediately after Section 7 the following Section:

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

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

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

(4) Where a phased-development condominium was accepted for registration before the coming into force of this Section, a failure to comply with the subdivision-approval requirements of the *Municipal Government Act*, or the former *Planning Act*, or a regulation or by-law made thereunder does not affect the creation of a title or interest in real property conveyed, or purported to have been conveyed, by deed, lease, mortgage or other instrument.

3 Subsection 46(1) of Chapter 85, as amended by Chapter 33 of the Acts of 1996 and Chapter 28 of the Acts of 1998, is further amended by adding immediately after clause (bd) the following clause:

(be) prescribing the conditions a phased-development condominium must meet, and prescribing the information or documents to be provided to the Registrar, in order to be exempt from the subdivision-approval requirements of the *Municipal Government Act*;

PART II

INTERPRETATION ACT

4 Clause 19(k) of Chapter 235 of the Revised Statutes, 1989, the *Interpretation Act*, is amended by adding "Saturday or a" immediately before "holiday" in the second and in the fourth lines.

PART III

JURIES ACT

5 Clause 4(a) of Chapter 16 of the Acts of 1998, the *Juries Act*, is amended by adding "the House of Assembly," immediately after "of" in the first line.

6 Subsection 10(1) of Chapter 16 is amended by striking out "At least two months before" in the first line and substituting "Before".

PART IV

JUSTICES OF THE PEACE ACT

7 Subsection 9(1) of Chapter 244 of the Revised Statutes, 1989, the *Justices of the Peace Act*, as enacted by Chapter 16 of the Acts of 1992, is amended by adding "or 10A" immediately after "10" in the first line.

8 Subsection 10(1) of Chapter 244, as enacted by Chapter 16 of the Acts of 1992 and amended by Chapter 28 of the Acts of 2000, is further amended by striking out "Supreme Court (Family Division)" in the first line and substituting "Family Court".

9 Subsection 11(1) of Chapter 244, as enacted by Chapter 16 of the Acts of 1992 and amended by Chapter 28 of the Acts of 2000, is further amended by striking out "Supreme Court (Family Division)" in the second line and substituting "Family Court".

PART V

MOTOR VEHICLE ACT

10 Subsection 53(4) of Chapter 293 of the Revised Statutes, 1989, the *Motor Vehicle Act*, is amended by striking out "295" in the fourth line and substituting "298".

11 Subsection 97(2) of Chapter 293 is amended by striking out "295" in the fourth line and substituting "298".

12 Subsection 170A(4) of Chapter 293, as enacted by Chapter 35 of the Acts of 1996, is amended by striking out "and liable on summary conviction to a fine of not less than twenty-five dollars" in the third and fourth lines.

13 (1) Subsection 173(5) of Chapter 293 is repealed.

(2) Subsection 173(6) of Chapter 293 is amended by striking out "the penalty referred to in subsection (5)" in the first and second lines and substituting "any other penalty imposed by this Act".

14 Subsection 175(9) of Chapter 293 is amended by striking out "and is liable on summary conviction to a fine of not less than twenty-five dollars or more than one hundred dollars" in the second, third and fourth lines.

15 Subsection 182A(6) of Chapter 293, as enacted by Chapter 12 of the Acts of 1994-95, is repealed.

16 Subsection 200(3) of Chapter 293 is amended by striking out "and on summary conviction is liable to a penalty of not less than one hundred dollars and not more than five hundred dollars" in the third, fourth and fifth lines.

17 (1) Subsection 201(8) of Chapter 293, as enacted by Chapter 12 of the Acts of 2001, is amended by striking out everything after "offence" in the third line to the end of the subsection and substituting a period.

(2) Subsection 201(9) of Chapter 293, as enacted by Chapter 12 of the Acts of 2001, is amended by striking out everything after "offence" in the third line to the end of the subsection and substituting a period.

18 Subsection 242(3) of Chapter 293 is amended by striking out "and incur a penalty of not less than ten dollars and not more than one hundred dollars for each offence" in the fourth, fifth and sixth lines.

19 Subsection 287(3) of Chapter 293 is repealed.

20 Sections 292 to 299 of Chapter 293 are repealed and the following Sections substituted:

292 Any person who violates any of the provisions of Section 14, 18, 30, 31, 34, 35 or 58, subsection (3) of Section 71, subsection (2) of Section 78, Section 95, 127, 128, 143, 144, 146, 148, 155 or 156, subsection (1) of Section 158 or Section 159, 160, 162, 166, 167, 168, 169, 170A, 171, 172, 182 or 183 is guilty of an offence and liable on summary conviction to the penalties provided for a category A offence in the *Summary Proceedings Act*.

293 Any person who violates any of the provisions of Section 16, 28, 37, 38, 40, 50, 61 or 69, subsection (2) of Section 83, Section 90, 93, 113, 118, 119, 120, 122, 123, 126, 129, 133, 134 or 135, subsection (1) of Section 136

or Section 138, 139, 140, 141, 151, 161, 165, 174, 175, 178, 179, 181A, 184, 185, 186, 187, 198, 201, 202 or 246 is guilty of an offence and liable on summary conviction to the penalties provided for a category B offence in the *Summary Proceedings Act*.

294 Any person who violates any of the provisions of Section 19, 23, 24, 26, 27, 29, 65 or 70, subsection (1) of Section 83, Section 94 or 96, subsection (4) of Section 103, Section 106A, 110, 111, 112, 116, 117, 121, 124, 130, 132, 145, 150, 164, 170, 181 or 188, subsection (1) of Section 191, subsection (4) of Section 192, Section 199 or 200, subsection (9) of Section 201 or Section 204, 242, 260, 289 or 290 is guilty of an offence and liable on summary conviction to the penalties provided for a category C offence in the *Summary Proceedings Act*.

295 Any person who violates any of the provisions of Section 6, 11, 13, 56, 57, 60, 64, 75, 76 or 82, subsection (10) of Section 98, Section 99, 99A, 102, subsection (1) of Section 103, Section 106B, 107, 107A, 114, 115, 190 or 210, subsection (3) of Section 280 or Section 303 is guilty of an offence and liable on summary conviction to the penalties provided for a category D offence in the *Summary Proceedings Act*.

296 Any person who violates any of the provisions of Section 47, 63 or 108 is guilty of an offence and liable on summary conviction to the penalties provided for a category E offence in the *Summary Proceedings Act*.

297 Any person who violates any of the provisions of Section 32, 33, 97, 100, 100A, 100B or 101, subsection (3) of Section 103, Section 106C, 107B, 125 or 125A, subsection (2) of Section 136 or Section 163, 173, 182A or 303H is guilty of an offence and liable on summary conviction to the penalties provided for a category F offence in the *Summary Proceedings Act*.

298 Any person who violates any of the provisions of Section 41, 43, 53, 80 or 97, subsection (11) of Section 98, subsection (8) of Section 201, Section 214, subsection (4) of Section 279, subsection (1) or (2) of Section 287 or Section 301 is guilty of an offence and liable on summary conviction to the penalties provided for a category G offence in the *Summary Proceedings Act*.

299 Any person who violates any of the provisions of Section 230 is guilty of an offence and liable on summary conviction to the penalties provided for a category H offence in the *Summary Proceedings Act*.

299A Any person who violates any of the provisions of Section 46, 49 or 51 is guilty of an offence and liable on summary conviction to the penalties provided for a category I offence in the *Summary Proceedings Act*.

299B An individual who is in default of payment of a fine imposed as a penalty pursuant to Sections 292 to 299A may be imprisoned for

(a) two days if the amount of the fine is less than one hundred dollars; or

(b) two days plus one day for each fifty dollars or part thereof over one hundred dollars if the amount of the fine is more than one hundred dollars, to a maximum of one hundred and eighty days.

21 (1) Subsection 301(1) of Chapter 293 is amended by striking out everything after "certificate" in the fifth line to the end of the subsection and substituting "is guilty of an offence."

(2) Subsection 301(2) of Chapter 293 is amended by striking out "and liable upon summary conviction to the penalties prescribed by Section 293" in the third, fourth and fifth lines.

PART VI

MUNICIPAL GOVERNMENT ACT

22 Subsection 268(2) of Chapter 18 of the Acts of 1998, the *Municipal Government Act*, is amended by adding immediately after clause (i) the following clause:

(ia) resulting from the acceptance for registration by the Registrar of Condominiums of a phase of a phased-development condominium that meets the requirements, if any, prescribed by the regulations made pursuant to the *Condominium Act*;

PART VII

RESIDENTIAL TENANCIES ACT

23 Section 2 of Chapter 401 of the Revised Statutes, 1989, the *Residential Tenancies Act*, as amended by Chapter 31 of the Acts of 1992 and Chapter 40 of the Acts of 1993, is further amended by

(a) repealing clause (aa);

(b) striking out "Housing and Consumer Affairs" in the first and second lines of clause (c) and substituting "Service Nova Scotia and Municipal Relations";

and

(c) adding immediately after clause (i) the following clause:

(ia) "Small Claims Court" means the Small Claims Court of Nova Scotia;

24 Subsection 15(1) of Chapter 401, as enacted by Chapter 7 of the Acts of 1997, is amended by adding "relating to an application to the Director" immediately after "documents" in the first line.

25 Section 17B of Chapter 401 is repealed and the following Section substituted:

17B (1) Where no appeal is made pursuant to Section 17C, a decision or order made by the Director under this Act may be made an order of the Small Claims Court and may be enforced in the same manner as any order or judgment of that Court.

(2) To make a decision or order made by the Director an order of the Small Claims Court, the Director shall endorse a copy of the decision or order certified by the Director to be a true copy as follows:

Make the within an order of the Small Claims Court.

Dated this day of , 20

.....

Director of Residential Tenancies

(3) The Director may forward the decision or order so endorsed to a clerk of the Small Claims Court who shall, upon receipt thereof, enter the same as a record and it thereupon becomes and is an order of the Small Claims Court and enforceable as any order or judgment thereof.

26 (1) Subsection 17C(1) of Chapter 401, as enacted by Chapter 7 of the Acts of 1997, is amended by striking out "appropriate board" in the third line and substituting "Small Claims Court".

(2) Subsection 17C(2) of Chapter 401, as enacted by Chapter 7 of the Acts of 1997, is amended by

(a) striking out "Director" in the second line and substituting "Small Claims Court"; and

(b) striking out "regulation" in the fourth and in the fifth lines and substituting in each case "regulations made pursuant to the *Small Claims Court Act*".

(3) Subsection 17C(3) of Chapter 401 is repealed and the following subsections substituted:

(3) The appellant shall serve each party to the order and the Director with the notice of appeal and the notice of hearing.

(3A) Service of all documents may be by personal service or such other manner of service or substituted service permitted pursuant to the *Small Claims Court Act*.

(4) Subsection 17C(4) of Chapter 401, as enacted by Chapter 7 of the Acts of 1997, is amended by striking out "board" in the first line and substituting "Small Claims Court".

(5) Subsection 17C(5) of Chapter 401, as enacted by Chapter 7 of the Acts of 1997, is amended by striking out "board" in the first line and substituting "Small Claims Court".

(6) Subsection 17C(6) of Chapter 401, as enacted by Chapter 7 of the Acts of 1997, is amended by

(a) striking out "board" in the first line and substituting "Small Claims Court"; and

(b) striking ", or in writing or partly in writing and partly orally" in the second and third lines.

(7) Subsection 17C(7) of Chapter 401, as enacted by Chapter 7 of the Acts of 1997, is amended by striking out "board" both times it appears in the second line and in the third line and substituting in each case "Small Claims Court".

27 (1) Subsection 17D(1) of Chapter 401, as enacted by Chapter 7 of the Acts of 1997, is amended by

(a) striking out "seven" in the first line and substituting "fourteen"; and

(b) striking out "board" in the second line and substituting "Small Claims Court".

(2) Subsection 17D(2) of Chapter 401 is repealed.

28 (1) Subsection 17E(1) of Chapter 401, as enacted by Chapter 7 of the Acts of 1997, is amended by

(a) striking out "board" in the second and in the fourth lines and substituting in each case "Small Claims Court"; and

(b) adding "in the manner set out in the *Small Claims Court Act*" immediately after "Scotia" in the fourth line.

(2) Subsection 17E(2) of Chapter 401 is repealed and the following subsection substituted:

(2) An appeal pursuant to subsection (1) may only be taken on the ground of

(a) jurisdictional error;

(b) error of law; or

(c) failure to follow the requirements of natural justice.

29 Section 18 of Chapter 401 is repealed.

30 Subsection 18A(1) of Chapter 401, as enacted by Chapter 31 of the Acts of 1992, is amended by striking out "the Department of Consumer Affairs" in the second line and substituting "Service Nova Scotia and Municipal Relations".

31 Section 20 of Chapter 401, as amended by Chapter 31 of the Acts of 1992 and Chapter 7 of the Acts of 1997, is further amended by

(a) striking out "a board" in the second line and substituting "the Small Claims Court"; and

(b) striking out "board" in the fourth line and substituting "the Small Claims Court".

32 Sections 21 and 22 of Chapter 401 are repealed.

33 Section 23 of Chapter 401 is amended by striking out "a board" in the second line and substituting "the Director or the Small Claims Court".

34 Clauses 26(1)(ce) and (cf) of Chapter 401 are repealed.

35 Section 27 of Chapter 401, as enacted by Chapter 31 of the Acts of 1992, is amended by striking out "or an appeal to a residential tenancies board" in the third and fourth lines.

36 Section 28 of Chapter 401 is repealed.

37 (1) The appointments of the members of the residential tenancies boards, including the Cape Breton Residential Tenancies Board, Western Counties Residential Tenancies Board and Halifax County Residential Tenancies Board, are hereby revoked.

(2) Notwithstanding any enactment, all contracts, agreements and orders relating to or fixing the amount of compensation, remuneration, fees, entitlements or benefits, including pension benefits, to the members of the residential tenancies boards, are null and void.

(3) Notwithstanding the *Interpretation Act* and any other enactment or any contract, agreement or order, the members of the residential tenancies boards have no right to compensation for the loss of their offices or the emoluments of those offices and no compensation, remuneration or fees shall be paid to any of them on or after this Part comes into force.

PART VIII

SMALL CLAIMS COURT ACT

38 Section 9 of Chapter 430 of the Revised Statutes, 1989, the *Small Claims Court Act*, as amended by Chapter 16 of the Acts of 1992 and Chapter 8 of the Acts of 1999 (2nd Session), is further amended by

(a) striking out "ten" in the third line of clause (a) and substituting "fifteen";

(b) striking out "ten" in the fourth line of clause (b) and substituting "fifteen"; and

(c) striking out "ten" in the third line of clause (c) and substituting "fifteen".

39 Subsection 9A(2) of Chapter 430, as enacted by Chapter 28 of the Acts of 2000, is amended by adding "or to an appeal of an order of the Director of Residential Tenancies pursuant to Section 17C of the *Residential Tenancies Act* immediately after "taxations" in the last line.

40 Clause 10(d) of Chapter 430 is amended by adding "to which the *Residential Tenancies Act* applies, other than an appeal of an order of the Director of Residential Tenancies made pursuant to Section 17C of that Act" immediately after "tenant" in the second line.

41 Clause 29(1)(a) of Chapter 430, as amended by Chapter 33 of the Acts of 1994 and Chapter 28 of the Acts of 2000, is further amended by

(a) striking out "ten" in the third line of subclause (ii) and substituting "fifteen";

(b) striking out the semicolon at the end of subclause (ii) and substituting a comma; and

(c) adding immediately after subclause (ii) the following subclause:

(iii) for any remedy authorized or directed by an Act of the Legislature in respect of matters or things that are to be determined pursuant to this Act;

42 Subsection 32A(2) of Chapter 430, as enacted by Chapter 16 of the Acts of 1992, is amended by

- (a) striking out "perserving" in the second line of clause (a) and substituting "preserving"; and
- (b) striking out "employeee" in the last line and substituting "employee".

43 Subsection 33(1) of Chapter 430, as amended by Chapter 16 of the Acts of 1992, Chapter 8 of the Acts of 1999 (2nd Session) and Chapter 28 of the Acts of 2000, is further amended by adding immediately after clause (aa) the following clause:

(ab) governing the practice and procedures of appeals from orders of the Director of Residential Tenancies pursuant to the *Residential Tenancies Act*;

PART IX

SUMMARY PROCEEDINGS ACT

44 Chapter 450 of the Revised Statutes, 1989, the *Summary Proceedings Act*, is amended by adding immediately after Section 4A the following Section:

4B Notwithstanding Section 4,

- (a) where an enactment makes an offence punishable as a category A offence, a judge shall impose a fine of not less than twenty-five dollars for the first offence, not less than fifty dollars for the second offence and not less than one hundred dollars for the third or a subsequent offence;
- (b) where an enactment makes an offence punishable as a category B offence, a judge shall impose a fine of not less than fifty dollars for the first offence, not less than one hundred dollars for the second offence and not less than two hundred dollars for the third or a subsequent offence;
- (c) where an enactment makes an offence punishable as a category C offence, a judge shall impose a fine of not less than one hundred dollars for the first offence, not less than two hundred dollars for the second offence and not less than four hundred dollars for the third or a subsequent offence;
- (d) where an enactment makes an offence punishable as a category D offence, a judge shall impose a fine of not less than one hundred and fifty dollars for the first offence, not less than three hundred dollars for the second offence and not less than six hundred dollars for the third or a subsequent offence;
- (e) where an enactment makes an offence punishable as a category E offence, a judge shall impose a fine of not less than two hundred dollars for the first offence, not less than four hundred dollars for the second offence and not less than six hundred dollars for the third or a subsequent offence;
- (f) where an enactment makes an offence punishable as a category F offence, a judge shall impose a fine of not less than two hundred and fifty dollars for the first offence, not less than five hundred dollars for the second offence and not less than one thousand dollars for the third or a subsequent offence;
- (g) where an enactment makes an offence punishable as a category G offence, a judge shall impose a fine of not less than five hundred dollars for the first offence, not less than one thousand dollars for the second offence and not less than two thousand dollars for the third or a subsequent offence;
- (h) where an enactment makes an offence punishable as a category H offence, a judge shall impose a fine of not less than seven hundred and fifty dollars for the first offence, not less than fifteen hundred dollars for the second offence and not less than three thousand dollars for the third or a subsequent offence;

(i) where an enactment makes an offence punishable as a category I offence, a judge shall impose a fine of not less than one thousand dollars for the first offence, not less than two thousand dollars for the second offence and not less than four thousand dollars for the third or a subsequent offence.

PART X

TRUSTEE ACT

45 Section 3 of Chapter 479 of the Revised Statutes, 1989, the *Trustee Act*, is repealed and the following Sections substituted:

3 (1) A trustee may invest trust property in any form of property or security in which a prudent investor might invest, including a security issued by a mutual fund as defined in the *Securities Act*.

(2) Subsection (1) does not authorize a trustee to invest in a manner that is inconsistent with the trust.

(3) A trustee may have regard to the following criteria in planning the investment of trust property, in addition to any others that are relevant to the circumstances:

(a) general economic conditions;

(b) the possible effect of inflation or deflation;

(c) the expected tax consequences of investment decisions or strategies;

(d) the role that each investment or course of action plays within the overall trust portfolio;

(e) the expected total return from income and the appreciation of capital;

(f) other resources of the beneficiaries;

(g) needs for liquidity, regularity of income and preservation or appreciation of capital;

(h) an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

3A In investing trust property, a trustee must exercise the care, skill, diligence and judgment that a prudent investor would exercise in making investments.

3B A trustee must diversify the investment of trust property to an extent that is appropriate having regard to

(a) the requirements of the trust; and

(b) general economic and investment market conditions.

3C A trustee is not liable for a loss to the trust arising from the investment of trust property if the conduct of the trustee that led to the loss conformed to a plan or strategy for the investment of the trust property, comprising reasonable assessments of risk and return, that a prudent investor could adopt under comparable circumstances.

3D A court assessing the damages payable by a trustee for a loss to the trust arising from the investment of trust property may take into account the overall performance of the investments.

3E (1) A trustee may obtain advice in relation to the investment of trust property.

(2) It is not a breach of trust for a trustee to rely upon advice obtained under subsection (1) if a prudent investor

would rely upon the advice under comparable circumstances.

3F (1) In this Section, "agent" includes a stockbroker, investment dealer, investment counsel and any other person to whom investment responsibility is delegated by a trustee.

(2) A trustee may delegate to an agent the degree of authority with respect to the investment of trust property that a prudent investor might delegate in accordance with ordinary business practice.

(3) A trustee who delegates authority under subsection (2) must exercise prudence in

(a) selecting the agent;

(b) establishing the terms of the authority delegated; and

(c) monitoring the performance of the agent to ensure compliance with the terms of the delegation.

(4) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

(5) A trustee who complies with the requirements of subsection (3) is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

(6) This Section does not authorize a trustee to delegate authority under circumstances in which the trust requires the trustee to act personally.

(7) Investment in a security issued by a mutual fund as defined in the *Securities Act* or in a similar investment is not a delegation of authority with respect to the investment of trust property.

PART XI

YOUTH JUSTICE ACT

46 Section 15 of Chapter 38 of the Acts of 2001, the *Youth Justice Act*, is amended by striking out "a" in the first line.

47 Subsection 21(1) of Chapter 38 is amended by striking out "the" in the third line.

48 (1) Subsection 35(2) of Chapter 38 is amended by striking out "that" in the second line and substituting "than".

(2) Subsection 35(3) of Chapter 38 is amended by striking out "statement" in the second line and substituting "statements".

49 Subsection 39(2) of Chapter 38 is amended by adding "*Summary*" immediately after "*Persons*" in the second line.

PART XII

COMING INTO FORCE

50 Parts V, VII, VIII and IX come into force on such day as the Governor in Council orders and declares by proclamation.

