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## CHAPTER 41

### An Act Respecting the Civil Service

1. This Act may be cited as The Civil Service Act.

Short title.

2. In this Act and in any regulations made thereunder the following expressions shall, unless the context otherwise requires, have the meanings hereby respectively assigned to them, that is to say,

Interpretation.

- (a) "civil servant" means a person who is appointed by or with the approval of the Lieutenant-Governor in Council to a post for which specific provision has been made in the Estimates of Expenditure approved by the Legislature, to hold office during pleasure only and who is employed on a full-time basis and exclusively as a servant of the Crown upon an annual salary paid wholly and directly out of public funds voted by the Legislature;
- (b) "Civil Service Certificate" means a certificate issued in accordance with the provisions of this Act in respect of a civil servant;
- (c) "Department" means a department of the Crown;
- (d) "established civil servant" means a civil servant in respect of whom a civil service certificate has been issued;
- (e) "established post" means a post in respect of which a civil service certificate may be issued under this Act;
- (f) "head of a department" means any person designated by Statute or appointed by the Lieutenant-Governor in Council as permanent head of a department and shall include the Deputy Minister;
- (g) "Minister" means the Minister of Finance or such other member of the Government as may from time to time

be appointed by the Lieutenant-Governor in Council to administer this Act;

- (h) "pension" means an annual pension;
- (i) "pensionable earnings" means the amount resulting on the multiplication of the pensionable salary by the number of years of pensionable service;
- (j) "pensionable salary" means the annual average of salary received from public funds for the last three years of pensionable service, and, unless otherwise expressly provided by this Act or by the Lieutenant-Governor in Council, includes the annual average value of such additional emoluments legally and continuously enjoyed during the whole or part of the same period at the expense of public funds as the Lieutenant-Governor in Council may approve;
- (k) "pensionable service" means service which may be taken into account in determining whether a civil servant has qualified for award of a pension or a gratuity and the amount thereof;
- (l) "post" means an office or position to which a civil servant is or may be appointed;
- (m) "public funds" means moneys forming the Consolidated Revenue Fund;
- (n) "retirement age" means the end of the month in which a civil servant attains
  - (i) the age of sixty-five years for men, and for women to whom the Pension Plan established by The Public Service (Pensions) Act applies, or
  - (ii) the age of sixty years for women to whom the Pension Plan established by The Public Service (Pensions) Act does not apply; and

- (o) "unestablished civil servant" means a civil servant in respect of whom a civil service certificate has not been issued.

**3.** Subject to this Act and with the approval of the Minister of Finance a person who is unable to furnish a medical certificate of good health may be appointed to a post as an established or as an unestablished civil servant, but regulations relating to sick leave made under Section 14 shall not apply to any person appointed under this section and he shall be employed under such terms and conditions relating to sick leave as may be approved by the Minister of Finance at the time of his appointment.

Appointments in certain cases.

**4.** Civil Service Certificates may be used in respect of such posts, for which the annual salary exclusive of other emoluments is not less than five hundred dollars, as the Lieutenant-Governor in Council may decide.

Posts in respect of which Civil Service Certificates may be issued.

**5.** A civil servant shall, if required, take the oath of allegiance to Her Majesty and such other oaths as may be prescribed by the Lieutenant-Governor in Council.

Oath of allegiance.

**6.** No appointment to an established post, and no transfer or promotion to an established post carrying a higher salary or scale of salary, shall be effective unless and until approved by the Lieutenant-Governor in Council.

Approval of appointments and promotions by Lieutenant-Governor in Council.

**7.** Appointments and promotions to posts may be on a permanent, acting, or temporary basis: Provided that for the first twelve months of service every civil servant shall be on probation and the head of the department in which he is serving shall at the end of such period recommend to the Minister that the appointment be confirmed or discontinued, or that the period of probation be extended.

Nature of appointments.

**8.—(1)** The Minister shall issue a civil service certificate in respect of every person appointed to an established post, but

Civil service certificates.

where a person is on probation or employed on an acting or temporary basis, the certificate shall not be issued until the appointment is made permanent.

(2) A civil service certificate may be issued with retroactive effect in respect of any period allowed as pensionable service by or under this Act.

(3) In a civil service certificate there shall be set forth the name of the person in respect of whom and the designation of the post in respect of which it is issued, the date of appointment and such other particulars as the Minister may decide.

Contractual  
officers.

(4) In the case of a contractual officer, the Lieutenant-Governor in Council may, with the assent of the officer, cancel the contract *ab initio* without prejudice to anything already done thereunder, and substitute for the contract a civil service certificate predated to the date of the officer's engagement.

Employees  
of Boards,  
Commissions,  
etc.,  
transferable  
to civil  
service.

**9.** The Lieutenant-Governor in Council may, if in his opinion it is in the public interest to do so, order that all or any of the persons employed by any Board, Commission or other corporate or unincorporate body which is an agency or arm of the Crown are to be treated as civil servants and to receive civil service certificates; and thereupon such certificates shall be issued to them, predated in each case to such date as the Lieutenant-Governor in Council shall in such case direct.

Service  
anywhere in  
Newfoundland.

**10.** A civil servant shall, if required by the head of his department, serve in any place in Newfoundland and shall perform any duties that may be required of him by the Lieutenant-Governor in Council, and refusal to do so shall constitute cause for action under Section 16 of this Act.

Fees surrend-  
erable.

**11.** Unless otherwise provided by or under the authority of any Statute or specially exempted by the Lieutenant-Governor in Council, all fees and emoluments, other than emoluments duly provided out of public funds which are received by civil servants in the course of their official duties, shall be surrendered to the Exchequer.

**12.** No payment in addition to annual salary shall be made out of public funds to a civil servant except a payment

Additional remuneration, overtime, etc.

- (a) authorized by Statute or specially approved by the Lieutenant-Governor in Council;
- (b) for overtime performed on the instructions of the head of a department, with the prior approval in writing of the Minister and in accordance with rates and conditions approved by the Lieutenant-Governor in Council:

Provided that any payment made under this section shall not be included in pensionable salary.

**13.** When a civil servant is absent from his post for any reason other than leave of absence or sick leave or the performance of other duties assigned to him by a superior officer, a day's proportion of his salary shall be deducted for each day's absence.

Absence from post.

**14.** The Lieutenant-Governor in Council may make regulations providing for the maximum period or periods, and the conditions, of leave of absence, including sick leave, which may be allowed to various classes or grades of civil servants and other Government employees.

Leave of absence.

**15.—(1)** In this section

Interpretation.

- (a) "Association" means that organization known as the Newfoundland Government Employees' Association; and
- (b) "employee" means employee of the Government of Newfoundland as defined by The Public Service (Leave) Order, being Order-in-Council No. 83-'68 approved by His Honour the Lieutenant-Governor in Council on the sixth day of February, 1968.

(2) Notwithstanding any of the other provisions of this Act or any of the provisions of any other Act, the Lieutenant-Governor in Council may make regulations

Regulations respecting membership in, and payment to and refund of dues by, the Association.

- (a) authorizing and providing for the compulsory deduction by the province from the salary or wages of all

employees or any specified employee or employees or group or groups or class or classes of employees paid by the province of all or any part of moneys equal to the dues payable under the constitution of the Association for active membership therein;

- (b) authorizing and providing for the payment over by the province to the Association of any moneys so deducted, to be credited as dues payable under the constitution of the Association for active membership therein;
- (c) providing that, upon the payment over of any of such moneys to the Association in respect of any employee, such employee, if not already a member of the Association, shall thereupon become an active member thereof;
- (d) providing for the discontinuance, with retroactive or future, as the regulations may prescribe, effect, of membership in the Association effected by regulations made under this section and providing for and prescribing the circumstances under which, and the time and manner in which, all or any portion of the moneys collected and paid over to the Association under the regulations shall be refunded to an employee by the Association, including, without limitation of the generality of the foregoing, the giving of notice of withdrawal from membership by any employee who becomes a member of the Association by virtue of regulations made under this section and the form of and to whom such notice is to be given;
- (e) excluding from any or all of the provisions of the regulations any employee or employees or group or groups or class or classes of employees;
- (f) prescribing books, accounts and records to be kept and maintained by the Association with respect to moneys dealt with under the regulations and the manner of such keeping and maintenance;
- (g) providing for inspection by the Auditor General of the province of the books, accounts and records referred

to in paragraph (f) at such times as the regulations may prescribe; and

- (h) respecting any matter, whether of any of the foregoing kinds or not, necessary or advisable to carry out effectively the intent and purpose of this section,

and different regulations may be made with respect to different employees or groups or classes of employees and any regulations may be limited as to time or place or both.

(3) Regulations made under this section shall be published in *The Newfoundland Gazette* and shall have effect from the date of such publication or from such later date as may be stated in the regulations, and the regulations shall be laid before the Legislature within fifteen days after they are made, if the Legislature is then in session, and, if it is not, then within fifteen days after the commencement of the next ensuing session.

Publication.

**16.**—(1) Without prejudice to the power of the Lieutenant-Governor in Council to terminate the employment of a civil servant, the Lieutenant-Governor in Council may dismiss a civil servant or suspend him from duty or take other measures of disciplinary action against him for inefficiency, insobriety, insubordination, misconduct, dishonesty or other just cause, and may make regulations deputing all or any of such powers to heads of departments and prescribing the procedure to be followed in the exercise of the powers so deputed.

Dismissal, suspension or other disciplinary action against civil servant.

(2) Unless otherwise ordered by the Lieutenant-Governor in Council a civil servant shall not receive pay in respect of any period subsequent to dismissal, or in respect of any period of suspension.

Non-receipt of pay during suspension of after dismissal.

**17.**—(1) A civil servant shall be retired

Retirement of civil servant.

(a) on attaining retirement age;

(b) if such civil servant is unable to perform his duties efficiently owing to physical or mental incapacity, which

is medically certified to the satisfaction of the Minister to be likely to be permanent; or

- (c) if the post held by such civil servant is abolished or his services are no longer required as a result of a reorganization by which greater efficiency and economy is effected and no other post for which he would be suited is vacant.

Retirement  
of woman  
civil servant  
on marriage.

(2) An established woman civil servant shall be retired on marriage, unless the Minister on the recommendation of the head of the department in which she is employed approves her retention in the interest of the public service, and such retention shall be on a temporary basis.

Personal  
secretaries  
(female).

**18.** In the case of a female officer occupying the position of Confidential Secretary and Personal Assistant to the Premier or to any Minister of the Crown, the Lieutenant-Governor in Council may by order, and, if so desired, with retroactive effect, dispense with any limitations in respect of females existing in The Civil Service Act; and may in particular, without detracting from the generality of this provision, order that the provisions of the principal Act disqualifying married women from becoming or continuing after marriage to be established civil servants or as to temporary status during marriage or as to retirement at sixty years of age shall not apply to her, and that a civil service certificate predated to the date of her appointment shall be issued to her.

Award of  
pension.

**19.** The Lieutenant-Governor in Council may award a pension on the terms and conditions provided in this Act and subject to such further conditions as he may by regulations prescribe, to an established civil servant who has completed not less than ten years of service as such and has been retired under subsection (1) of Section 17 of this Act.

Calculation  
of pension.

**20.—**(1) Subject to subsections (2), (3) and (4) of this section and Sections 21 and 22, the amount of a pension which may be awarded under Section 19 is one and three-quarters of one per centum (1¾%) of the pensionable earnings, if the pensionable salary exceeds one thousand dollars (\$1,000.00), and two per

centum (2%) of the pensionable earnings, if the pensionable salary does not exceed one thousand dollars (\$1,000.00).

(2) Where the pensionable salary exceeds one thousand dollars (\$1,000.00), the pension shall not be less than if the pensionable salary had been one thousand dollars (\$1,000.00). Exception.

(3) No pension awarded under this Act shall exceed two-thirds of the pensionable salary. Maximum pension.

(4) When years of pensionable service are calculated and there is a fraction of a year, that fraction, if equal to or greater than one-half shall be counted as one full year, and, if less than one-half, shall not be counted. Calculation of pensionable service.

**21.**—(1) Subject to subsection (2) of this section, the amount of the pension calculated under Section 20 relating to pensionable service done after the thirty-first day of March, 1967, shall be reduced by six-tenths of one per centum (0.6%) of the pensionable salary of the civil servant used in the calculation of that amount up to but not exceeding his Year's Maximum Pensionable Earnings under the *Canada Pension Plan* established immediately before he ceased to be employed, multiplied by the number of years of his pensionable service done after the thirty-first day of March, 1967, up to but not exceeding thirty-eight (38) years of such pensionable service. Reduction of pension.

(2) Subsection (1) shall not be applied in respect of a pension awarded under this Act, until the person receiving the pension is eligible to receive benefits under the said the *Canada Pension Plan*, or would have become eligible to receive such benefits if he had applied therefor. Exception.

**22.**—(1) Subject to subsections (2), (3), (4) and (6), there shall be deducted from the salary of every civil servant and other Crown employee Deduction of premiums.

(a) six per centum (6%) of that portion of his salary which is his basic exemption under the said the *Canada Pension Plan*;

(b) four and two-tenths of one per centum (4.2%) of that portion of his salary in excess of his said basic exemption up to and including his Year's Maximum Pensionable Earnings as defined by the said the *Canada Pension Plan*; and

(c) six per centum (6%) of that portion of his salary which is in excess of his Year's Maximum Pensionable Earnings as defined by the said the *Canada Pension Plan*.

When deductions to be terminated or reduced.

(2) The premiums prescribed in subsection (1) shall not be payable after the date when the civil servant is credited with such pensionable service as would entitle him to receive a pension equal to sixty-six and two-thirds of one per centum ( $66\frac{2}{3}\%$ ) of his pensionable salary, if he had then reached retirement age, but thereafter there shall be deducted from his salary, until a pension is awarded to him, premiums calculated in accordance with the formula prescribed in that subsection on any amount by which his salary exceeds the salary paid to him on that date.

Application of section.

(3) Any service done on or after the first day of April, 1967, in respect of which the premiums payable under this Act have not been paid shall not be counted as pensionable service, but premiums are not payable in respect of pensionable service done before that date or pensionable service done before or after the enactment of this section and credited to a civil servant under Section 31 or 32.

Premiums credited.

(4) Moneys deducted or paid under The Pensions (Premiums) Act shall, notwithstanding anything to the contrary contained in that Act, be retained and credited to the person from whose salary or by whom they were paid for the period to which they relate, in lieu of premiums payable under this section.

Premiums, where deposited.

(5) All premiums deducted from the salary of, paid by or credited to any person under this section shall be deposited each month to the credit of the Consolidated Revenue Fund.

Return of premiums in certain cases.

(6) The Lieutenant-Governor in Council may, by order and from time to time, designate a class or classes of persons to whom subsection (1) shall not apply, and thereafter premiums shall not be deducted from the salary of any person in a class so desig-

nated, and all premiums then deducted from his salary, paid by or credited to him shall be returned to him, and where the premiums have been paid for at least one year, interest shall be paid thereon at the rate of three per centum (3%) per annum to the date of payment.

**23.** The Minister may award to an established civil servant who has been retired under paragraph (b) or (c) of subsection (1) of Section 17 of this Act, after completion of five, but before completion of ten, years of pensionable service a gratuity of an amount not exceeding one-twelfth of his pensionable earnings.

Gratuity to established civil servant retiring with less than ten years' service.

**24.** The Minister may award to an established woman civil servant, who has served as such for not less than five years and has been retired on marriage, a gratuity of an amount not exceeding one-twelfth of her pensionable earnings, and not in any event exceeding the amount of her pensionable salary.

Gratuity to woman civil servant on marriage.

**25.**—(1) The Minister may award a gratuity to the legal personal representative of an established male civil servant who dies in the service after having completed five years of pensionable service and the gratuity shall not exceed one-fortieth of his pensionable earnings where he has not completed fifteen years of pensionable service and shall not exceed one-twenty-sixth of his pensionable earnings where he has completed not less than fifteen years of pensionable service.

Gratuity.

(2) If an established male civil servant who has been awarded a pension on retirement dies before he has received payments of pension amounting in the aggregate to the amount of the gratuity which might have been paid under subsection (1) of this section, if he had died on a date immediately preceding that on which he was retired, the Minister may award to the legal representative of such male civil servant the difference between the total amount of such payments and the amount of such gratuity.

Payments to legal representative of established male civil servant who dies soon after retirement.

**26.**—(1) If a civil servant is injured

(a) in the discharge of his duty;

(b) without his own default; and

Injuries to civil servant in the discharge of duty.

- (c) by some injury specifically attributable to the nature of his duty;

and has been retired by reason of such injury or for any other reason, and his capacity to contribute to his support remains impaired by reason of such injury, the Lieutenant-Governor in Council may grant to him, or if he dies from the injury, to his widow or to his mother, if he leaves no widow and his mother is wholly dependent upon him at the time of his death, and to his children or to any of them, such pension or gratuity as the Lieutenant-Governor in Council may consider reasonable, and as may be in accordance with regulations under this section.

Regulations.

(2) The Lieutenant-Governor in Council may make regulations governing the grant of pensions or gratuities under this section.

Retirement  
for inefficiency.

**27.** The Lieutenant-Governor in Council may call upon a civil servant who has not attained retirement age to retire on the ground of his inability to discharge efficiently the duties of his office, and, if the Lieutenant-Governor in Council considers that special circumstances justify the grant of a pension or a gratuity, the civil servant so called upon to retire may be awarded such pension or gratuity, if he is an established civil servant, or such gratuity, if he is an unestablished civil servant, as the Lieutenant-Governor in Council considers reasonable: Provided that the amount of the pension or gratuity awarded to him shall in no case exceed that which would be awarded to him if he were being retired under paragraph (b) of subsection (1) of Section 17 of this Act.

Service not  
counting for  
pension or  
gratuity.

**28.** Pensionable service shall not include service during the following periods, that is to say

- (a) any period before the age of 18 in the case of a male and 17 in the case of a female;
- (b) any period during which a person is not in receipt of servant or of special leave without pay or of suspension, except a period of special leave without pay not exceeding thirty days in the aggregate;

- (c) any period during which a person is not employed as an established civil servant, unless otherwise provided by or under this Act;
- (d) periods of sick leave exceeding in the aggregate twelve months during any period of four years or less, and any period immediately preceding the date of retirement during which a civil servant is on sick leave and in receipt of less than full pay in consequence of sick leave;
- (e) subject to this Act, service prior to resignation or dismissal in case of re-employment subsequent to the eighteenth day of December, 1947, unless the Lieutenant-Governor in Council otherwise directs;
- (f) service prior to retirement with less than ten years of service in respect of which a gratuity was paid on retirement and has not been refunded on re-employment;
- (g) service by an established woman civil servant prior to retirement on marriage in respect of which a marriage gratuity has been paid, and has not been refunded on re-employment; and
- (h) service done after the thirty-first day of March, 1967, in respect of which the premiums payable under this Act have not been paid by or credited to the civil servant concerned.

**29.—**(1) Unless otherwise provided in this Act, the number of years which an established civil servant has served since his appointment as such shall be taken into account in determining whether he has qualified for the award of a pension or a gratuity under the provisions of this Act and the amount thereof.

Years of service counted in case of established civil servant.

(2) Unless otherwise provided in this Act, the number of years which an unestablished civil servant has served since his appointment as such shall be taken into account in determining whether he has qualified for the award of a gratuity under the provisions of this Act and the amount thereof.

Years of service counted in case of unestablished civil servant.

Extra service to count in determining amount of pension or gratuity.

(3) For the purpose of determining the pensionable earnings of an established civil servant, the Lieutenant-Governor in Council may, as years of pensionable service, add to the number of years which an established civil servant has served since his appointment as such, the following:

- (a) in the case of a person who was forty or more years of age when appointed to an established post in a senior technical or professional capacity a number of years equal to two-fifths of the number of years which he has served since such appointment; and the provisions of this paragraph shall apply in the case of a person who was between the ages of thirty-five and forty years when appointed to such post, the period of service of any such person before attaining the age of forty years being disregarded: Provided that in respect of a person appointed after the eighteenth day of December, 1947, the Lieutenant-Governor in Council
  - (i) has at the time of his appointment directed that this paragraph shall apply, or
  - (ii) declares at any time that he is satisfied that it was the intention of the Government at the time of his appointment to make the addition of the extra years a condition of that person's employment,

and provided further that notwithstanding any such direction or declaration this paragraph shall not have effect so as to prevent or reduce any award under this Act which might have been made if the direction or declaration had not been given or made;

- (b) in the case of a person, who, immediately prior to his appointment to an established post, was employed as an unestablished civil servant, a number of years equal to one-half of the period of such employment: Provided that such period would have counted for pension if he had been an established civil servant, and provided that

no extra years are added under the provisions of paragraph (a) of this subsection;

- (c) where an established civil servant has immediately prior to his appointment as such been employed on a full time basis as a teacher in a public school or college in Newfoundland and has paid the full contributions under any scheme for pensioning of teachers, or in other public service pensionable under a scheme which provides for pensions or gratuities similar to those applying to established civil servants and the cost of which is borne wholly or mainly by the Government of Newfoundland or by a body operating a service on behalf of that Government, such further years, not exceeding the period of such employment, as may be recommended by the Minister, but years of teaching service done by a person at any time before his appointment as an established civil servant may be taken into account for the purposes of this paragraph, even though he was not employed as a teacher in a public school or college in Newfoundland immediately prior to such appointment, if he was employed as a teacher in Newfoundland for an aggregate of not less than one calendar year: Provided that
- (i) the further years would have counted for pension if such employment had been in an established post,
  - (ii) the person forfeits all claim to and has received no payment of pension or gratuity in respect of such employment, or if he has received payment of such pension or gratuity, he has refunded the same,
  - (iii) where contributions towards pensions were payable under any such scheme during the previous employment, such contributions have been paid by the employee and have not been refunded to him, or if refunded have been paid by him again with interest to the date of payment at the rate which at the time of the refund applied under the scheme, and

(iv) no extra years are added under the provisions of paragraph (a) of this subsection;

(d) in the case of an established civil servant who in the public interest has been seconded by the Lieutenant-Governor in Council to perform other public service, remunerated wholly or mainly out of public funds, of a kind which would not otherwise count for pension under this Act, the period of such secondment: Provided that no pension or allowance has been granted in respect of such period under any other pension scheme, and that if the civil servant retires during secondment, or within three years after completion thereof, the salary which he would have received had he not been seconded but had continued to be employed as a civil servant shall be deemed to have been his salary for the purpose of determining his pensionable salary.

Extra service to count in qualifying for pension or gratuity.

(4) Periods of service added in accordance with the provisions of subsection (3) of this section, except years added under paragraph (a) thereof, may also be included in the number of years of service required to qualify for an award of pension or gratuity.

Service in H. M. Forces.

**30.** Years of service by a civil servant in the Naval, Military, or Air Forces of Her Majesty during a time of war shall be counted as years of pensionable service of such civil servant: Provided that immediately before joining the Forces he was employed as a civil servant and that he resumed employment as a civil servant within three months after his discharge from the Forces and that, if he had continued to be employed in the Civil Service, such employment would have counted as pensionable service.

Service done before resignation.

**31.** Where an established civil servant retired for the purpose of

- (a) contesting an election or a by-election for the return of members or a member to the Parliament of Canada or to the Legislature of the province; or
- (b) entering the Civil Service of Canada; and
- (c) he was not eligible for the award of a pension on retirement; and

- (d) where he retired for any of the purposes referred to in paragraph (a) and within two years after he contested any such election, if he was not elected, or within two years after he ceased to be a member of the Parliament of Canada or of the Legislature of the province, if he was elected, he applied in writing to the Minister to be reappointed, and before the expiration of three months next following such application is reappointed an established civil servant; or
- (e) where he retired for the purpose referred to in paragraph (b) and is reappointed an established civil servant immediately after he ceased to be employed in the Civil Service of Canada,

all service done by him before such retirement which if he had been eligible for the award of a pension on retirement would have been counted as pensionable service shall be credited to him as pensionable service on his reappointment.

**32.**—(1) For the purposes of this section “transferred employee” means a person who was employed as an established civil servant on the thirty-first day of March, A.D. 1949, and who accepted employment with the Government of Canada which was offered to him in pursuance of paragraph (1) of Term 39 of the Terms of Union of Newfoundland with Canada set forth in the Schedule to the *British North America Act, 1949*.

Employment with the Government of Canada counted as pensionable service in certain cases.

(2) Where a transferred employee was at any time before or after the enactment of this section re-employed as an established civil servant and immediately before such re-employment he held the employment with the Government of Canada referred to in subsection (1) all service done by him in such employment with the Government of Canada shall be credited to him as pensionable service for the purpose of determining whether he is qualified for the award of a pension or gratuity under this Act and the amount thereof, as if the service done by him in the employment with the Government of Canada had been done as an established civil servant.

**33.** The pension or gratuity which may be awarded under this Act to a civil servant who is receiving or is entitled to receive

Persons in receipt of pensions from more than one source.

a pension or gratuity in respect of employment as a teacher in a public school or college in Newfoundland or in other public service under any pension scheme the cost of which is borne wholly or mainly by the Government of Newfoundland or by a body operating a service on behalf of the said Government, shall not exceed the amount by which the pension or gratuity, which might be awarded under this Act if such other employment had been in an established post, exceeds the pension or gratuity under such other scheme.

Allocation  
of pension.

**34.** The Lieutenant-Governor in Council may make regulations providing that in such circumstances and subject to such conditions as to proof of good health and other matters as may be specified in the regulations, a civil servant on retirement may be permitted to surrender, as from the date of his retirement, a part of the pension which may be awarded under this Act, other than a pension in respect of an injury, in consideration of the grant to the wife or to a dependent of the civil servant of a pension of such value as, according to tables to be prepared from time to time, is actuarially equivalent at that date to the part of the pension which is surrendered.

Amount of  
pension to  
be paid to  
pensioner on  
re-employment.

**35.—(1)** If a retired civil servant in receipt of a pension under this Act is appointed to a post, no more of his pension shall be paid to him than the amount by which the salary and emoluments of the post from which he was retired exceeds the salary and emoluments of the post to which he is appointed: Provided that, during the period of re-employment of any retired civil servant who has received a gratuity under the provisions of Section 44 of this Act, the amount by which his pension has been reduced under the provisions of the said section shall be deemed to have been paid to him as part of his pension.

Pensioner  
liable for  
further  
service in  
certain cir-  
cumstances.

**(2)** A retired civil servant who has not attained retirement age and who is in receipt of a pension under this Act and is not disabled by physical or mental infirmity, may be called upon by the Lieutenant-Governor in Council to fill, in any part of Newfoundland, a post not lower in rank or in salary and emoluments than that from which he was retired, and if he refuses or neglects so to do, or to execute the duties thereof to the best of his ability, his pension may be forfeited by the Lieutenant-Governor in Council.

(3) A retired civil servant in receipt of a pension under this Act who is appointed to an established post before reaching retirement age, may, at the time of such appointment elect to have the payment of his pension entirely suspended, and if no pension is in fact paid during the period of his re-employment he may have his pension re-assessed as from the date of his final retirement in accordance with the provisions of this Act as if no award of pension had already been made to him, and his period of service subsequent to such appointment shall form part of his pensionable service: Provided that if he has received a gratuity under the provisions of Section 44 of this Act, he shall refund such amount as represents the difference between the total amount which he has received as pension and gratuity and the total amount which he would have received as pension if he had not received such gratuity, and provided that a refund under this subsection may, subject to the approval of the Minister, be made by instalments before he reaches retirement age and over such period not exceeding five years as the Minister may prescribe.

Pension may be suspended during re-employment.

(4) Subject to the provisions of subsection (1) of this section, nothing in this section shall prevent the re-employment of a civil servant who continues to receive a pension awarded under this Act: Provided that service during such re-employment shall not be pensionable service.

Re-employment in non-pensionable capacity.

**36.** The salary and emoluments of a civil servant and the pension or gratuity of a retired civil servant shall not be liable to or be taken under attachment or execution and shall not pass to or vest in a trustee in insolvency: Provided that, with the consent in writing of the Minister, a judge of the Supreme Court may direct payment to a trustee in insolvency, and provided further that any sums owing to the Government of Newfoundland by a civil servant or a retired civil servant may be deducted from the salary, emoluments, pension, or gratuity of such civil servant or retired civil servant, either in a lump sum or by instalments as the Minister may decide.

Pensions and gratuities of civil servants not attachable.

**37.** No salary of a civil servant and no pension or gratuity of a retired civil servant shall be assigned or given as security: Provided that the head of a department may, if he thinks fit, on receipt of the authority in writing of a civil servant or a

Assignment of salaries, pensions, and gratuities.

retired civil servant, approve payment in whole or in part to a relative of such civil servant or retired civil servant or to any other person, and provided further that the Minister may direct that payment be made to a relative or other person who maintains or who is responsible for the maintenance of a civil servant or a retired civil servant who is suffering from physical or mental incapacity.

Recovery of  
overpayment.

**38.** The Minister may adjust or cancel any pension which has been awarded or paid as the result of error or misrepresentation and if through any cause an overpayment of pension has been made, he may reduce, suspend or withdraw future payments of pension until the amount overpaid has been recovered.

Regulations.

**39.** The Lieutenant-Governor in Council may make regulations in respect of any matter which may be done under this Act or in respect of any other matter concerning the employment, terms and conditions of service, and remuneration of civil servants and the award and payment of pensions or gratuities to retired civil servants, not being inconsistent with the provisions of this Act.

Publication of  
regulations.

**40.** Regulations made under this Act shall be published in *The Newfoundland Gazette* and shall take effect from the date of publication, or such later date as shall be prescribed by such regulations.

Treasury  
control  
not affected.

**41.** Nothing in this Act shall be deemed to affect the operation of the Treasury Control provisions of the Revenue and Audit Act.

Payment of  
salaries,  
pensions, and  
gratuities.

**42.—(1)** Salaries of civil servants and pensions of retired civil servants shall be payable monthly in arrears, in equal twelfths of the annual rate, out of public funds voted by the Legislature: Provided that the Minister may authorize the payment of salaries or pensions at shorter intervals than one month or, in special circumstances and in accordance with conditions to be prescribed by the Lieutenant-Governor in Council, before the end of any month.

Payment in  
respect of  
part of  
month.

**(2)** Payments due in respect of a part of a month shall be deemed to accrue from day to day as a proportion of the amount

due in respect of the whole of that month: Provided that the salary of a civil servant who dies during a month shall be payable for the whole of that month.

(3) The salary of a civil servant shall cease on the day of his retirement and a pension awarded to him shall begin to accrue on the day following that on which he is retired.

Salary to cease on day of retirement.

(4) The pension of a retired civil servant shall cease at the end of the month in which he dies.

When pension ceases.

(5) (a) Where a person to whom any payment of salary, pension, or gratuity could have been made under this Act before his death, dies before that payment is made, or where a gratuity is payable under this Act on the death of a civil servant, and the amount so unpaid or payable does not exceed fifteen hundred dollars, probate or other proof of title of the personal representative of the deceased person may be dispensed with, and the amount so unpaid or payable may be paid or distributed to or among the persons appearing to the Minister to be the persons beneficially entitled to the estate of the deceased person or to or among any one or more of such persons, and, in determining the persons to whom or the proportions in which the amount so unpaid or payable shall be paid or distributed, the Minister may have regard to any payments made or expenses incurred by any such person for or on account of the burial expenses of the deceased person.

Payment without probate in certain cases.

(b) Where a deceased person has died intestate and he was, or any child of his was or is, illegitimate, that deceased person and any such child shall, for the purpose of this subsection, be treated as legitimate.

**43.** The Minister shall prepare for the approval of the Lieutenant-Governor in Council a list of civil servants who at the 18th day of December, 1947, held posts which had previously been accepted as entitling the occupants to pension, but which are not established posts, and upon such approval the provisions of this Act relating to the award of pensions and gratuities

Pensions or gratuities for existing civil servants who are not appointed established civil servants.

shall apply in respect of such civil servants as if they were established civil servants.

Reduced pension plus gratuity payable at option of pensioner.

**44.**—(1) A civil servant to whom a pension is awarded under the provisions of this Act may at his option, exercisable within one month after the date of his retirement and subject to proof of good health, be paid in lieu of such pension a pension at a rate not below three-fourths of such pension together with a gratuity,

- (a) in the case of a female civil servant who has reached retirement age, of an amount equal to ten times the amount of the reduction so made in the pension, and
- (b) in the case of a male civil servant who has reached retirement age, of an amount equal to eight times the amount of the reduction so made in the pension, and
- (c) in the case of a civil servant who has not reached retirement age, of an amount to be determined in accordance with the provisions of regulations made under subsection (4) of this section:

Provided that this section shall not apply in the case of a civil servant who is retired under the provisions of paragraph (b) of subsection (1) of Section 17 of this Act or is re-employed under the provisions of Section 35 of this Act.

Option irrevocable.

(2) The exercise of the option under this section shall be irrevocable.

Regulations respecting proof of good health.

(3) The Lieutenant-Governor in Council may make regulations prescribing the procedure to be followed in relation to the proof of good health required under this section, and such regulations may provide for the giving, within a period before the probable date of retirement or after retirement, of notification of a desire by the civil servant to exercise the option provided for under this section, and may provide for extension in special cases of the period specified for exercise of such option.

Regulations respecting basis for gratuity.

(4) The Lieutenant-Governor in Council may make regulations prescribing the basis for determining the amount of a

gratuity which may, under the provisions of subsection (1) of this section, be paid to a civil servant who has not reached retirement age.

**45.**—(1) The Minister may award to a person who has been employed by a Department on a full time basis and exclusively as a servant of the Crown and who has been paid wholly and directly out of public funds but who was not an established civil servant and was not included in any list prepared under Section 43 and who has been retired after attaining retirement age or by reason of permanent physical or mental incapacity which is medically certified to the satisfaction of the Minister to be likely to be permanent, a gratuity amounting to

Gratuities for persons who are not established civil servants.

- (a) one-fortieth of his average monthly salary or wages during the last thirty-six months of his service for each completed month of service, where that person has been retired after the completion of an aggregate of ten years of service and before the completion of an aggregate of fifteen years of service; or
- (b) one-twenty-sixth of his average monthly salary or wages during the last thirty-six months of his service for each complete month of service, where that person has been retired after completion of an aggregate of fifteen years of service.

(2) This section shall not apply to persons engaged on contracts for a definite period or periods.

**46.** If a person to whom a gratuity might have been awarded under Section 45 of this Act shall die while in the service of the Government leaving a widow, or children, or mother wholly or mainly dependent upon him, the Minister may award a gratuity calculated on the basis provided in subsection (1) of Section 45 to such widow, or children, or mother.

Gratuities to dependents in case of death.

**47.**—(1) Subject to this Act, every established civil servant shall receive a pension as a matter of right.

Pensions a matter of right.

(2) Nothing in subsection (1) or the other provisions of this Act affects the right of the Crown to dismiss any civil servant or any other person at any time.

Right of dismissal.

Pensions, etc., may be reduced or suspended in certain cases.

(3) Where it is established to the satisfaction of the Lieutenant-Governor in Council that a civil servant employed by a department and qualified for the award of a pension or a gratuity, has, during his last three years of service or employment, been guilty of negligence, irregularity, or misconduct, the Lieutenant-Governor in Council may reduce the amount, or withhold payment, of a pension or gratuity awarded or, if a pension or gratuity has not been awarded, may withhold any such award or may award a pension or gratuity in an amount below that provided by this Act and may order that any award shall become effective as from such date after retirement as the Lieutenant-Governor in Council may decide.

Pensions, etc., may cease on conviction.

**48.** The Lieutenant-Governor in Council may direct that a pension shall be forfeited for a period or indefinitely if the person entitled thereto is convicted of a felony or misdemeanour and sentenced to a term of imprisonment.

Appeal.

**49.—(1)** A civil servant or other person who is aggrieved by a decision of the Minister or of the Lieutenant-Governor in Council in any matter related to, connected with or arising out of his entitlement to or the award to him of a pension under this Act may appeal therefrom to a judge of the Supreme Court of Newfoundland or a judge of a district court within the territorial limits of which the civil servant or other person resides.

Service of notice.

(2) If a civil servant or other person proposes to appeal under subsection (1), he shall, within sixty (60) days after he has received the decision of the Minister or of the Lieutenant-Governor in Council, serve on the Minister a written notice of his intention to appeal to a judge of the Supreme Court or to a judge of a District Court.

Notice to set forth grounds of appeal.

(3) The notice of appeal served under subsection (2) shall be signed by the civil servant or other person or by his solicitor or agent, and in the notice, the grounds of the appeal shall be set forth, and the civil servant or other person shall file a copy of the notice in the office of the Registrar of the Supreme Court of Newfoundland, or with the judge of the District Court if his appeal is made to a District Court.

**50.**—(1) The civil servant or other person shall, within fourteen days after service of the notice of appeal under subsection (2) of Section 49, apply to the judge for the appointment of a day for the hearing of the appeal, and shall, not less than fourteen days before the hearing, serve upon the Minister a written notice of the day appointed for the hearing.

Appointment of a day for hearing.

(2) The judge shall hear the appeal and the evidence adduced before him by the civil servant or other person and by the Minister in a summary manner and shall decide the matter of the appeal.

Judge to hear appeal.

(3) The Minister shall cause to be produced before the judge on the hearing of the appeal all papers and documents in his possession affecting the matter of the appeal.

Production of papers, etc.

(4) The costs of the appeal are in the discretion of the judge and he may make an order respecting them in favour of or against the Minister and may fix the amount thereof.

Costs.

(5) An appeal may be taken from the decision of the judge to the Supreme Court upon any point of law raised upon the hearing of the appeal, and the rules governing appeals to that Court from a decision of a judge of the Supreme Court or a judge of a District Court, whichever rules are appropriate, apply to appeals under this subsection.

Appeal to Supreme Court.

**51.**—(1) Unless otherwise expressly provided by or under this Act, this Act shall not apply to employees of public bodies whose salaries or wages are not paid directly by a department or out of public funds or to any member of the Constabulary whether or not he has elected in accordance with the repealed provisions of this Act that this Act and the regulations made thereunder relating to the award of pensions and gratuities shall not apply in his case.

Act does not apply to certain Crown employees.

(2) For the purposes of this section "Constabulary" means the Constabulary Force of Newfoundland and includes the Fire Department of the City of St. John's.

Meaning of Constabulary.





## CHAPTER 42

### An Act Respecting the Civil Service Commission of Newfoundland

**1.** This Act forms part of The Civil Service Act and may be cited as The Civil Service Commission Act. Short title.

**2.** In this Act Interpretation.

- (a) "chairman" means the chairman of the commission;
- (b) "civil service" means the several departments of the Government of Newfoundland, the Board of Liquor Control and the commission and includes such boards and similar organizations established by or under an Act of the Legislature to which the regulations are made to apply;
- (c) "commission" means the Civil Service Commission appointed under Section 3;
- (d) "commissioner" means a member of the commission;
- (e) "Minister" means the Minister of Finance;
- (f) "regulations" means regulations made under this Act.

**3.** The Lieutenant-Governor in Council shall appoint a Civil Service Commission consisting of not more than three members and shall appoint one member to be chairman. Civil Service Commission; chairman.

**4.—(1)** Each commissioner holds office during good behaviour until he attains the age of sixty-five years but is removable by the Lieutenant-Governor in Council on address of the House of Assembly, but the Lieutenant-Governor in Council may extend the service of any commissioner for such period as he deems fit. Tenure of office.

- Salary. (2) The Lieutenant-Governor in Council shall fix the salary to be paid to each commissioner.
- Duties. (3) Each commissioner shall discharge the duties assigned to him under this Act and the regulations and such other duties as the Minister with the approval of the Lieutenant-Governor in Council assigns to him.
- Oath. (4) Each commissioner shall before entering upon his duties take and subscribe before the Clerk of the Executive Council the oath set out in the Schedule.
- Pension and other rights. 5. If a civil servant is appointed as a commissioner he is subject to the provisions of The Civil Service Act relating to pensions, gratuities, and leave and for the purposes of that Act there shall be added to the years of service as a member of the commission such years of pensionable service, if any, as he has served as a civil servant prior to his appointment as a commissioner.
- No appointment to civil service in certain cases except on recommendation of commission. 6. Save in the case of posts or classes of posts specifically exempted by the Lieutenant-Governor in Council from the operation of this Act and the regulations, no person shall be appointed to the civil service unless he is recommended by the commission.
- Duties of commission. 7. The duties of the commission are
- (a) to test and pass upon the qualifications of candidates for admission to and transfer and promotion in the civil service;
  - (b) to investigate and report to the Minister upon the operation of this Act and upon the violation of any of the regulations and upon any other matter relative to the civil service, its officers, clerks, and other employees;
  - (c) to investigate and report to the Minister upon the organization of any part of the civil service and upon any proposed change in the organization;

- (d) to investigate and report to the Minister upon the classification or reclassification of the different posts, classes, and grades in the civil service;
- (e) to recommend the transfer of supernumeraries or other officers, clerks, and employees from parts of the civil service where they are no longer required to other parts of the civil service where they are required;
- (f) to do such other acts and things as may be necessary for the proper administration of this Act and the regulations; and
- (g) such other duties as may from time to time be assigned to it by the Minister with the approval of the Lieutenant-Governor in Council.

**8.** Such officers, clerks and employees as are necessary in the opinion of the Minister for the proper administration of this Act and the regulations shall be appointed or employed in the manner authorized by law. Staff.

**9.** In connection with and for the purposes of any investigation or report, any commissioner holding an investigation has all the powers of a commissioner appointed under The Public Enquiries Act. Powers of commissioner in any investigation.

**10.** The chairman shall, following the end of each financial year of the Government, make a report to the Minister of the transactions and affairs of the commission during the immediately preceding financial year and the Minister shall lay the report before the Legislature. Annual report to Minister.

**11.** The Lieutenant-Governor in Council may make such regulations as he deems necessary or advisable to provide for the organization and operation of the civil service and to assist the commission in carrying out its duties and in particular but without restricting the generality of the foregoing may make regulations Regulations.

- (a) prescribing the procedure to be followed in the appointment of civil servants and other Government employees;

- (b) prescribing the method of classifying, re-classifying and promoting civil servants and other Government employees and of transferring or seconding civil servants and other Government employees from one department to another;
- (c) prescribing a schedule of classifications for civil servants and other Government employees, including qualifications and duties;
- (d) providing for the establishment of advisory, joint or departmental councils or committees and prescribing the powers and duties thereof;
- (e) respecting any other matter necessary or advisable to carry out effectively the intent and purpose of this Act.

Repeal by  
proclamation.

**12.** The Lieutenant-Governor in Council may by proclamation repeal any provision of The Civil Service Act which in his opinion deals with any subject dealt with by regulations made under this Act.

#### SCHEDULE

Schedule.

#### OATH OF OFFICE AND SECRECY.

I.....do solemnly and sincerely swear that I will faithfully and honestly fulfil the duties which devolve upon me as a member of the Civil Service Commission and that I will not, without due authority in that behalf, disclose or make known any matter which comes to my knowledge by reason of my holding office as such member. So help me God.



## CHAPTER 43

### An Act to Provide for the Payment of Accelerated Pensions to Employees of the Newfoundland Government Transferred to Services of the Government of Canada at the Date of Union

**1.** This Act may be cited as The Civil Service (Transferred Employees) Act.

Short title.

**2.** This Act applies to persons who were on March 31, 1949, the date of Union of Newfoundland with Canada, employees of the Government of Newfoundland in the services taken over by the Government of Canada under the Terms of Union of Newfoundland with Canada set forth in the Schedule to the *British North America Act, 1949*, and who thereafter accepted employment, in those or similar Canadian services including without limiting the generality of the foregoing, employment with the Canadian National Railways, which was offered to them in pursuance of paragraph (1) of Term 39 of the Terms of Union.

Application of Act.

**3.—(1)** When any of the persons referred to in Section 2 is retired from a Canadian service referred to in that section before he reaches the age of sixty-five years and a superannuation allowance, a retiring allowance or a pension is granted or awarded to him in respect of his employment in the Canadian service, to commence upon his retirement, any such person may before the expiration of ninety days from the date of such retirement elect

Reduced pensions payable to certain persons who retire before reaching age of sixty-five years.

- (a) to receive when he reaches the age of sixty-five years a pension in respect of his service with the Government of Newfoundland to be calculated and paid in accordance with Term 39 of the Terms of Union; or
- (b) to receive as soon as he retires from the Canadian service a pension in respect of his service with the Government of Newfoundland the rate of which shall be

calculated so that based on his life expectancy the aggregate of the pension payments made to him under this paragraph shall not cast a heavier burden on the province than if he had elected to be pensioned under paragraph (a).

(2) When a person to whom this section applies fails to exercise an election under subsection (1) any pension payable in respect of his service with the Government of Newfoundland shall be paid in accordance with paragraph (a) of that subsection, and where he exercises an election such pension shall be paid in accordance with the method selected by him.

Act applies to certain pensions retired before its enactment.

**4.**—(1) Subject to subsections (2) and (3), this Act applies to persons referred to in Section 2 who were retired from a Canadian service referred to in that section before the date that this Act came into force as if they had been retired after that date.

(2) Persons referred to in subsection (1) may exercise an election under subsection (1) of Section 3 before the expiration of ninety days from the date that this Act came into force.

(3) Nothing in this section shall be deemed to authorize the payment of a sum of money to any person in respect of any period that occurred before the date that this Act came into force.

Pension to be suspended on re-employment.

**5.** When any person under the age of sixty-five years to whom pension payments are being made under paragraph (b) of subsection (1) of Section 3 is employed or re-employed by the Government of Canada, by any agency of that Government, by any corporation the main business of which is the management or administration of the property of that Government or by the Government of Newfoundland, the pension payments shall be suspended during the period of such employment or re-employment.

Payment of pension.

**6.** When a person elects to be pensioned under paragraph (b) of subsection (1) of Section 3, the pension payable to him under that paragraph may be paid to him directly by the province or the province may make an agreement with Her Majesty in right of Canada under which the pension payments would be made by Her Majesty and the province would reimburse Her Majesty in respect of such payments.

7. Nothing in this Act shall be deemed to confer on any person to whom it applies, any right in respect of his service with the Government of Newfoundland prior to the thirty-first day of March, 1949, that he did not enjoy before the enactment of this Act.

No additional rights conferred by Act.

8. All payments required to be made by the province under this Act shall be paid out of the Consolidated Revenue Fund of the province.

Payments out of Consolidated Revenue Fund.





## CHAPTER 44

### **An Act to Provide for the Abatement and Control of Pollution of Air, Soil and Water and for the Conservation and use of Water as a Natural Resource of the Province; to Provide an Aid Towards the Centralization and Coordination of the Multiformal Controls over the use of Water Generally by the Creation of an Authority as an Arm of Government.**

**1.** This Act may be cited as The Clean Air, Water and Soil Authority Act. Short title.

**2.** In this Act Interpretation.

- (a) "Authority" means the Newfoundland and Labrador Clean Air, Water and Soil Authority established by this Act;
- (b) "beneficial use" means a use of water, including the method of diversion, storage, transportation and application, that is reasonable and consistent with the public interest in the proper utilization of water resources, including but not being limited to domestic, agricultural, industrial, power, municipal, navigational, fish and wildlife and recreational uses;
- (c) "body of water" means any surface or subterranean source of fresh water supply, whether such source usually contains water or not, and includes any river, stream, brook, creek, watercourse, lake, pond, spring, lagoon, ravine, gulch, canal and any other flowing or standing water and the land usually or at any time occupied by any such body of water;

- (d) "Commission" means the Advisory Commission on Environmental Quality appointed under this Act;
- (e) "Her Majesty" means Her Majesty in right of Newfoundland;
- (f) "land" means real property of whatsoever nature or kind and includes tenements, hereditaments and appurtenances, leaseholds, and any estate, term, easement, right or interest in, to, over, under or affecting land, including rights-of-way, and works, waters, water rights, water powers and water privileges;
- (g) "licence" means a licence issued under this Act;
- (h) "Local Advisory Commission" means a Local Advisory Commission appointed under this Act;
- (i) "Minister" means the Minister of Mines, Agriculture and Resources or any other Minister of the Crown appointed by the Lieutenant-Governor in Council for the time being to administer this Act;
- (j) "municipal authority" means
  - (i) the City of St. John's,
  - (ii) the City of Corner Brook,
  - (iii) The St. John's Metropolitan Area Board,
  - (iv) the council of a community established or continuing and operating under The Community Councils Act, and
  - (v) a Town Council, Rural District Council or board of trustees established or continuing and operating under The Local Government Act;
- (k) "person" includes a body of persons whether incorporated or not;

- (l) "pollution" means any alteration of the physical, chemical, biological or aesthetic properties of air, soil or waters of the province, including change of temperature, taste or odour, or the addition of any liquid, solid, radio-active, gaseous or other substance to the air, soil or waters or the removal of such substances from the air, soil or waters, which will render or is likely to render the air, soil or waters of the province harmful to the public health, safety or welfare, or harmful or less useful for domestic, agricultural, industrial, power, municipal, navigational, recreational or other lawful uses, or for animals, birds or aquatic life;
- (m) "regulations" means regulations made under this Act;
- (n) "sewage" means municipal, commercial and industrial water-borne wastes and, unless from natural run-off, drainage and storm water;
- (o) "sewage works" means any works for or incidental to the collection, transmission, treatment and disposal of sewage, or any part of such sewage works;
- (p) "water resources" means all bodies of water in the province;
- (q) "waterworks" means any public, commercial or industrial works for the collection, production, treatment, storage, supply and distribution of water, or any part of any such waterworks; and
- (r) "works" includes all property, buildings, erections, plant, machinery, installations, materials, dams, canals, devices, fittings, apparatus, appliances and equipment.

**3.** The Minister is charged with the administration of this Act.

Minister to administer Act.

**4.—(1)** There is hereby established, as a servant and agent of Her Majesty, an authority which shall be known as the Newfoundland and Labrador Clean Air, Water and Soil Authority.

Creation of Authority.

Membership  
of Authority.

- (2) The membership of the Authority shall consist of
- (a) the Deputy Ministers of, or such other officials as may be designated from time to time by the Ministers of the following Departments,
    - (i) the Department of Mines, Agriculture and Resources,
    - (ii) the Department of Health,
    - (iii) the Department of Fisheries,
    - (iv) the Department of Economic Development, and
    - (v) the Department of Municipal Affairs and Housing; and
  - (b) such other members, not less than two and not more than six, to be appointed by the Lieutenant-Governor in Council.

Chairman and  
vice-chairman.

- (3) The Lieutenant-Governor in Council shall designate from the members appointed under subparagraph (b) of subsection (2) one of the members of the Authority to be chairman and another to be vice-chairman.

Authority  
responsible  
to Minister.

- (4) The Authority shall be under the control of and be responsible to the Minister and shall assist the Minister in carrying out the powers, functions and duties conferred on him by this Act.

Advisory  
Commission.

**5.—(1)** The Lieutenant-Governor in Council may appoint an Advisory Commission on Environmental Quality, consisting of not less than fifteen and not more than twenty-five members, and

- (a) the Department of Mines, Agriculture and Resources;
- (b) the Department of Health;
- (c) the Department of Fisheries;
- (d) the Department of Economic Development; and

(e) the Department of Municipal Affairs and Housing

shall each be represented by at least one member who is employed or designated by such Department.

(2) The Lieutenant-Governor in Council may appoint Local Advisory Commissions for specified areas of the province or designate an existing board, commission or other body as a Local Advisory Commission for any such specified area.

Local  
Advisory  
Commissions.

(3) The Lieutenant-Governor in Council may designate one of the members of the Commission and one of the members of a Local Advisory Commission to be chairman and another to be vice-chairman of the Commission and of a Local Advisory Commission, as the case may be.

Chairman and  
vice-chairman  
of Commission  
and Advisory  
Commission.

(4) The Commission and Local Advisory Commissions shall perform such duties and functions as are conferred upon them by the Lieutenant-Governor in Council, the Minister or the Authority.

Functions.

(5) All members of the Commission or of a Local Advisory Commission shall hold office during pleasure.

Tenure of  
office.

6.—(1) A majority of the members of

Quorum.

(a) the Authority;

(b) the Commission; or

(c) a Local Advisory Commission

shall constitute a quorum.

(2) When, at any meeting of the Authority, the Commission or a Local Advisory Commission, as the case may be, there is an equality of votes inclusive of his own vote, the member thereof presiding at the meeting has a second or casting vote.

Casting  
vote of  
presiding  
member.

(3) If any vacancy occurs in the membership of the Authority, the Commission or a Local Advisory Commission, by reason of the death, resignation or indisposition of any member, the Lieu-

Vacancy.

tenant-Governor in Council, the Minister or the Department, as the case may be, may exercise the power of appointment or designation conferred by this Act to appoint another person to replace such member.

Member of House of Assembly may be member.

(4) Notwithstanding The Legislative Disabilities Act, if a member of the House of Assembly is or becomes a member of the Authority, the Commission or a Local Advisory Commission, as the case may be, his seat does not become vacant by reason only of his appointment and acceptance of remuneration as a member of the Authority, the Commission or a Local Advisory Commission, as the case may be.

Remuneration of members of Authority, Commission and Local Advisory Commissions.

7. The Lieutenant-Governor in Council may authorize the payment of a separate remuneration or a *per diem* allowance and expenses to those members of the Authority appointed under paragraph (b) of subsection (2) of Section 4 and to some or all of the members of the Commission or a Local Advisory Commission.

Chairman to be chief executive officer of Authority.

8.—(1) The chairman shall be the chief executive officer of the Authority and shall be charged with the general direction, supervision and control of the business of the Authority and shall have such other powers, duties and functions as may be conferred on him by the regulations.

Minutes to be kept.

(2) The chairman shall keep or cause to be kept regular minutes of the meetings of the Authority and shall ensure that full and complete books of record are kept.

Powers of Authority not impaired by vacancy in membership.

(3) The exercise of the powers of the Authority shall not be impaired by reason of a vacancy in its membership.

Acts valid notwithstanding certain defects.

(4) All acts done by the Authority shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment or qualification of a person purporting to be a member of the Authority, be as valid as if the defect had not existed.

Absence of chairman.

9. During the incapacity or absence for any reason of the chairman or a vacancy in the office of the chairman, the vice-chairman, or one of the other members of the Authority, the

Commission or the Local Advisory Commission, as the case may be, designated by the Lieutenant-Governor in Council, has and may exercise all the powers of the chairman and shall discharge all of his duties.

**10.**—(1) Subject to the approval of the Lieutenant-Governor in Council, the Minister may appoint a secretary to the Authority and such inspectors, managers, engineers, accountants, other officers, technical and professional and other employees and workmen as may be deemed requisite, and fix their remuneration.

Appointment  
of staff.

(2) All officers, clerks, technicians and other employees appointed under subsection (1) shall receive the same benefits with respect to leave and pensions and be subject to the same terms and conditions of service as are applicable to employees of departments of Government.

Terms of  
employment.

**11.**—(1) The Authority shall have an official seal which shall be judicially recognized.

Seal.

(2) Whenever the official seal of the Authority is used, it shall be authenticated by the signature of the Minister, or in the absence of the Minister, by the signature of the chief executive officer of the Authority.

Application  
of seal.

**12.** The Authority may, under the control and direction of the Minister

General  
powers of  
Authority.

(a) purchase, lease or otherwise acquire any land or personal property of every nature and kind, or interest therein, which is deemed necessary, convenient or advisable to acquire for or incidental to the exercise of the powers, functions or duties conferred by this Act;

(b) sell or otherwise dispose of any of its land or personal property of every nature and kind, or any interest therein and grant any estate, term, easement, right or interest in, over or affecting any of such land or personal property;

- (c) co-operate with, assist or act as agent for the Minister in carrying out the powers, functions and duties conferred on him by this Act; and
- (d) generally do all things which may be done by any of the provisions of this Act and which is deemed necessary, convenient or advisable for or incidental to the exercise of any of the powers, functions and duties conferred by this Act.

Vesting all water in the Crown.

**13.**—(1) Subject to subsection (2), the property in and the right to the use and flow of all water at any time in any body of water in the province are for all purposes vested in Her Majesty, and no right to divert or use water or any body of water may be acquired by prescription.

This Act subject to certain other Acts.

(2) The property in and the right to the use and flow of all water vested in Her Majesty by virtue of subsection (1) shall be subject to any rights of property, use and flow conferred on any municipal authority or person by or under any statute of the province or any valid grant, lease, licence or other instrument.

No right to pollute.

(3) Nothing in this section or any statute of the province or any valid grant, lease, licence, or other instrument shall confer or be construed to confer the right or privilege of water pollution to the degree beyond that which is prescribed by the regulations as constituting a polluted or unwholesome condition, or tending to such condition or any right or privilege which would have the effect of excluding or limiting the right of control conferred by this Act or the regulations on the Minister in respect of the pollution of water, and any such rights or privileges held immediately before the enactment of this Act, whether such rights are held by statute or by a valid grant, lease or licence or by the operation of law or otherwise howsoever, are forever extinguished and barred.

Powers, functions and duties of the Minister.

**14.** Without limitation of his powers, functions and duties, included in the powers, functions and duties of the Minister shall be to

- (a) make arrangements, enter into agreements or otherwise co-operate with the Government of Canada or of any province of Canada, or any department, agency or body under the jurisdiction of the Government of Canada, or any municipal authority or other body or authority in such manner and to such extent as may be necessary or desirable for carrying out any of the purposes of this Act, or of any Act of Canada now or hereafter in force which makes provision for the optimum use and preservation of water resources for the benefit of all Canadians, including without limitation of the foregoing, any of the purposes of the conservation, development, control, improvement or proper utilization of the water resources of the province or of Canada, or the prevention of pollution of air, soil or water resources;
- (b) undertake, promote or recommend investigations, studies or measures for any of the purposes referred to in paragraph (a);
- (c) collect, compile, analyze and record such statistical and other information as may be useful for any of the purposes referred to in paragraph (a);
- (d) prepare and publish statistics, reports, records, bulletins, pamphlets, circulars and other means of disseminating information and advice as may be useful in relation to any of the purposes referred to in paragraph (a);
- (e) do such other things or exercise such other powers as are necessary or desirable for carrying out any of the purposes referred to in paragraph (a); and
- (f) exercise and discharge such other powers, functions and duties as the Lieutenant-Governor in Council assigns to him.

**15.—**(1) The Minister may cause such studies as he considers advisable to be made of any bodies of water within the province for the purpose of assembling the fullest possible information on the quantity, quality, character, location and use or possible use of such bodies of water and respecting any matter

Studies  
for water  
conservation.

whether of the foregoing kind or not, which he considers advisable in the interests of the present or future conservation, development, control, improvement or proper utilization of such bodies of water or in the interests of the compilation of information of value to the province in or for such conservation, development, control, improvement or proper utilization.

Report.

(2) The Minister shall make a written report to the Lieutenant-Governor in Council on the results of any studies carried out under subsection (1), and copies of such report shall be laid upon the Table of the House of Assembly at the session thereof next ensuing after such report is made to the Lieutenant-Governor in Council.

Minister to  
make recom-  
mendations.

(3) The Minister shall, in the report referred to in subsection (2), make whatever recommendations he considers advisable for carrying out the purpose and intent of this Act, including, without limiting the generality of the foregoing, any recommendations as to reforestation or other ancillary water conservation, development or improvement measures.

Regulations.

**16.**—(1) Subject to this Act, the Lieutenant-Governor in Council may make such regulations not inconsistent with this Act as he deems necessary or advisable for the more effective carrying out of the purposes of this Act according to its true spirit, intent and meaning and for dealing with any matters for which no express provision has been made or in respect of which only partial or imperfect provision has been made, and, without prejudice to the generality of the foregoing, may make regulations

- (a) providing for the inspection and testing of air, soil or bodies of water;
- (b) prohibiting, restricting and regulating the use of water from any specified body or bodies of water or bodies of water generally for household, industrial, commercial or irrigation purposes;
- (c) prescribing what qualities and properties of air, soil or water shall constitute a polluted condition or an unwholesome condition;

- (d) preventing or restricting the pollution, discoloration or rendering unwholesome of bodies of water;
- (e) prescribing standards of quality of water supplies intended for household, industrial or irrigation purposes with power to adopt, with or without modification, published codes, rules or standards relating to water quality;
- (f) regulating the qualities and properties of sewage and industrial waste effluents that may be discharged into any body of water;
- (g) prescribing methods of treatment of sewage and industrial waste effluents that may be discharged into any body or bodies of water;
- (h) prohibiting or restricting the discharge of sewage or industrial waste effluents into any body or bodies of water;
- (i) providing for the investigation of complaints of
  - (i) the pollution or rendering unwholesome of bodies of water,
  - (ii) acts tending to such pollution or unwholesomeness, and
  - (iii) acts detrimental to the conservation, development, control, improvement or proper utilization of the water resources of the province;
- (j) regulating the use for pleasure or recreation of bodies of water;
- (k) requiring any person who has caused any body of water, or part thereof, or soil on any area of land to become polluted or unwholesome to cleanse, disinfect or purify the same at his own cost and expense, and prescribing how and when such cleansing, disinfection or purification is to be carried out;

- (l) regulating the method of the carrying on of any businesses, trades or industries which in the opinion of the Minister, if not so regulated, would or might cause pollution or the rendering unwholesome of any body or bodies of water or would or might be detrimental to the proper conservation, development, control, improvement or utilization of the water resources of the province;
- (m) preventing or restricting the pollution of the air;
- (n) providing for the investigation of complaints of air pollution;
- (o) prescribing standards of emission for any gaseous or particulate substances emitted to the air from any public, industrial or commercial works;
- (p) preventing or restricting pollution of the soil;
- (q) providing for the licensing of persons with respect to the use of the water from any specified body or bodies of water or bodies of water generally for any specified household, industrial, commercial or irrigation purpose and fixing the licence fees payable by such persons at different amounts;
- (r) providing for the form of licences and the terms and conditions upon which licences may be issued, refused, renewed, suspended or revoked;
- (s) prohibiting persons from using water from any specified body or bodies of water or bodies of water generally for any specified household, industrial, commercial or irrigation purpose, except under authority of a licence;
- (t) requiring and prescribing returns, accounts, records and statements to be made by persons holding licences and other persons, the information to be given in such returns, accounts, records and statements, and by whom and in what manner and at what time or times they shall be made;

- (u) providing for the holding of enquiries into any complaint referred to in paragraph (i) or into the operation of this Act or into any charge or complaint that any person whosoever has contravened any provision of this Act, or the regulations, or has made any false statement in any form, return, account or statement required to be completed or made under this Act or the regulations, or into any other matter arising in the administration of this Act, and providing that the person holding such enquiry shall have any or all of the powers that are or may be conferred upon a commissioner by or under The Public Enquiries Act, including the power to take evidence under oath;
- (v) providing for the issuance by the Minister of orders designed to prevent or remedy the pollution or rendering unwholesome of the air, soil or any body or bodies of water;
- (w) providing for the appointment of inspectors and other officers to carry out and enforce the Act and regulations and prescribing their powers, duties and functions;
- (x) exempting from the provisions of the regulations or any portion thereof any person or class of persons; and
- (y) assigning or conferring upon the Authority, the Commission or any Local Advisory Commission, as the case may be, or the chairman of the Commission, the Authority or any Local Advisory Commission, as the case may be, or both such Authority, Commission or Local Advisory Commission and such chairman, such powers, duties and functions as he may consider necessary or advisable for any of the purposes of this Act or the regulations.

(2) Regulations may be made under subsection (1) to apply to the whole of the province or may be restricted in their application to specified areas of the province and may be limited as to time or otherwise.

Application  
of regulations.

- Offence. (3) Every person who fails to comply with or otherwise contravenes any of the provisions of regulations made under subsection (1) or of any order made under the regulations is guilty of an offence and is liable, on summary conviction to the penalty prescribed therefor under subsection (4).
- Provision of penalties. (4) The Minister may, in regulations made under subsection (1), prescribe penalties for offences under subsection (3).
- Further offences. (5) The conviction of any person for failing to comply with or otherwise contravening any of the provisions of the regulations or of any order made under the regulations shall not operate as a bar to further prosecution or prosecutions for the continued failure to comply with or contravention of any such provision or order.
- Publication and date of coming into force. (6) Regulations made under subsection (1) shall be published in *The Newfoundland Gazette* and shall have effect from the date of publication or from such later date as may be stated in the regulations, and the regulations shall be laid before the Legislature within fifteen days after they are made, if the Legislature is then in session, and, if it is not, then within fifteen days after the commencement of the next ensuing session.
- Certain powers of Minister. **17.** Subject to the provisions of this Act, the Minister shall have the control of
- (a) the use of all surface, ground and shore waters;
  - (b) the allocation of the use of waters;
  - (c) pollution of air, soil and water originating within the jurisdiction of the province; and
  - (d) alteration of the natural features of any body of water and the natural movement of water therein.
- Approval of waterworks by Minister. **18.—(1)** When a municipal authority or person contemplates the establishment of waterworks, or the extension of or change in any existing waterworks, the plans, specifications and an engineer's report of the water supply and the works to be under-

taken, together with such other information as the Authority may require, shall be submitted to the Authority, and no such work shall be undertaken or proceeded with until the source of water supply and the proposed works have been approved, in writing by the Minister.

(2) Where any municipal authority or person undertakes or proceeds with the establishment of waterworks or the extension of or change in any existing waterworks, without first having obtained the approval referred to in subsection (1), the Minister may order an investigation of the works and the source of water supply and may order such changes to be made in the works or in the source of water supply, as the Minister deems necessary, such investigation and changes to be made at the expense of the municipal authority or person.

Establishment  
or extension  
without  
approval.

(3) Where, in the opinion of the Minister, it is in the public interest to do so, the Minister may refuse to grant his approval or may grant his approval on such terms and conditions as he deems necessary.

Refusal or  
conditional  
grant of  
approval.

(4) Where, in the opinion of the Minister, the quality or property of water in any existing waterworks is in a polluted or unwholesome condition or any existing waterworks require alteration, the Minister may order alterations or additions, as may be deemed necessary, to be made by and at the expense of the municipal authority or person operating the same and in such manner and within such time as he shall direct.

Orders for  
alteration  
of works.

(5) Waterworks shall at all times be maintained, kept in repair and operated in such manner and with such facilities as may be directed from time to time by the Minister.

Maintenance  
and operation  
of waterworks.

**19.** Subject to the approval of the Lieutenant-Governor in Council, the Minister may authorize the Authority by itself or through some other body approved by the Minister, to construct, take over, operate or manage such waterworks as it may be in the public interest to construct, take over, operate or manage, and such authorization shall be effective to confer upon the Authority or such other body approved by the Minister all powers for or incidental to such construction, taking over, operation or management, including, without limitation of the foregoing, powers

Authority  
may operate  
waterworks.

to set such user charges as it considers desirable and charge and collect from any municipal authority or person such user charges, which user charges may be set at a uniform rate or at different rates for different types of use or for different municipal authorities or persons.

Approval of works by the Minister.

**20.—(1)** Every person or municipal authority shall prior to

- (a) the construction of sewage works or the extension of or change in any sewage works; or
- (b) the construction of any industrial or processing works which will, when established and in operation, emit smoke, vapour or gas into the open air, or the extension or change in any existing industrial or processing works which will, when such extension or change is established and in operation, emit smoke, vapour or gas into the open air

submit to the Authority the plans, specifications and an engineer's report of the works to be undertaken and the location of the discharge of the effluent or emission, together with such other information as the Authority may require, and the works shall not be undertaken or proceeded with until the proposed works have been approved in writing by the Minister.

Establishment or extension without approval.

(2) Where any person or municipal authority undertakes or proceeds with the construction, extension or change of any of the works referred to in subsection (1), without first having obtained the approval referred to therein, the Minister may order an investigation of the works and the location of the discharge of effluent or emission and may order such changes to be made in the works or in the location of the discharge of effluent or emission as the Minister may deem necessary, such investigation and changes to be made at the expense of the person or municipal authority.

Refusal or conditional grant of approval.

(3) The Authority shall, after considering the plans, specifications, report and such other information as may be required by it under subsection (1), submit a report with recommendations to the Minister, and the Minister may, after considering the report and taking account of the recommendations therein and con-

sidering also any provisions in the regulations relating to qualities, properties and treatment of sewage or standards of emission for gaseous or particulate substances, as the case may be, grant approval to the construction of the proposed works, which approval may be given subject to such terms and conditions as may be warranted by the foregoing considerations and accounts taken.

(4) Where, upon receiving a recommendation from the Authority that,

Orders for alteration.

- (a) any sewage requires sewage works;
- (b) any existing sewage works require alteration; or
- (c) any smoke, vapour or gas which is emitted from industrial or processing works is likely to pollute the air,

the Minister may order alterations or additions, as may be necessary, to be made by and at the expense of the municipal authority or person operating the same and in such manner and within such time as he shall direct.

(5) The works referred to in subsection (1) shall at all times be maintained, kept in repair and operated in such manner and with such facilities as may be directed from time to time by the Minister.

Maintenance and operation of sewage works.

**21.** Unless approved in writing by the Minister no municipal authority or person shall discharge or deposit any material of any kind into a body of water or on any shore or bank thereof or in any place that may cause pollution or impair the quality of water for any beneficial use.

Pollution of waters prohibited.

**22.—(1)** The Minister may define and prescribe an area surrounding any source of public water supply, and thereupon the municipal authority or person operating a waterworks and using water from that source shall

Protection of source of public water supply.

- (a) give notice of the area so defined and prescribed by publication or otherwise; and
- (b) protect such source of public water supply.

Prohibition  
against  
pollution.

(2) In such defined and prescribed area, no person shall

- (a) place, deposit, discharge or allow to remain therein any material of any kind that might impair the quality of the water; or
- (b) bathe, swim or wash in or otherwise impair the quality of the water.

Approval of  
commercial  
or industrial  
use of body  
of water.

**23.**—(1) When any municipal authority or person contemplates a hydro-electric power project, a control dam, a river diversion, a drainage diversion or any alteration of a body of water or of water flow therein, the plans and other such information as the Authority may require shall be submitted to the Authority, and no such proposed work shall be undertaken or proceeded with until approved in writing by the Minister.

Application of  
subsection (3)  
of Section 20.

(2) Subsection (3) of Section 20 shall apply to an approval by the Minister under this section in so far as it affects a body of water to which subsection (2) of Section 13 applies.

Stopping orders.

**24.**—(1) The Minister may, on receiving a report from the Authority, the Commission or a Local Advisory Commission that a condition exists which is causing or is likely to cause pollution of the air, soil or any body of water, make such orders as he considers necessary to protect the environment from such condition and to prevent, restrict or prohibit any activity which in his opinion is giving rise to or is likely to give rise to such condition, and without prejudice to the foregoing generality may make an order stopping any works or operations, (in this and the next succeeding section referred to as a "stopping order") either permanently or for such period as is specified in the order.

Service of  
copy order.

(2) Not less than forty-eight hours after making a stopping order, the Minister shall cause to be served on the owner or person in charge of the works or the operations affected by the order a copy of the order and a statement showing the reasons for the making of the order, and upon receipt of such copy and statement, the owner or person in charge of the works or operations shall ensure that the works or operations are stopped.

**25.—(1)** The owner or other person aggrieved by any stopping order may Appeal

- (a) in the case of a stopping order directing a permanent stoppage, within sixty days from the date of the order; or
- (b) in the case of a stopping order directing stoppage for a period which is not permanent, at any time during the period

appeal against the order to a judge of the Supreme Court of Newfoundland by filing a notice of appeal in the office of the Registrar of the Supreme Court and by serving a copy of the notice of appeal on the Minister or the Deputy Minister of Resources.

(2) Notwithstanding any rule or practice to the contrary, the notice of appeal shall Contents of  
notice of  
appeal.

- (a) set out in detail the allegations of the appellant and the grounds upon which the order is appealed against; and
- (b) be signed by the appellant or his solicitor.

(3) The appellant shall, within fourteen days after service of the notice of appeal under this section, apply to the judge for the appointment of a day for the hearing of the appeal and shall, not less than fourteen days before the hearing, serve upon the Deputy Minister of Resources a written notice of the day appointed for the hearing. Application  
for hearing.

(4) The Minister shall cause to be produced before the judge hearing the appeal all papers and documents in his possession affecting the matter of the appeal. Documents.

(5) The judge shall hear the appeal and the evidence adduced before him by the appellant and Her Majesty in a summary manner and shall decide the matter of the appeal by Hearing.

- (a) upholding, amending or revoking the stopping order after considering, upon all matters submitted to him, whether the works or operations did constitute a con-

dition which did pollute or was likely to pollute the air, soil or any body of water; or

- (b) making such other decision which he considers to be proper in the circumstances

and with power also to make orders as to costs for or against the appellant or Her Majesty and to fix the amount thereof.

Appeal on  
ground of law.

(6) An appeal may be taken from the decision of the judge to the Supreme Court upon any point of law raised upon the hearing of the appeal, and the rules governing appeals to that court from a decision of a judge of the Supreme Court shall apply to appeals under this subsection.

Stopping order  
to subsist.

(7) The filing of a notice of appeal under this section, or the appeal itself shall not affect the stopping order, which shall remain in force pending the outcome of the appeal.

Powers of  
officers.

**26.** Without limitation of any powers given by the other provisions of this Act or by the regulations, any inspector or other officer appointed under this Act or the regulations may enter into and go upon any land or body of water for the purpose of carrying out any of his duties, powers and functions, including, without limitation of the foregoing, inspecting and testing any air, soil or body of water.

Access to  
records of  
water users.

**27.** The Minister, or any person appointed by him for the purpose, shall have authority to inspect such of the works, books, accounts, papers and records of any person licensed to use water pursuant to regulations made under paragraph (q) of subsection (1) of Section 16 as may be relevant to such use.

General  
penalties.

**28.—(1)** Every municipal authority or person who fails to comply with or otherwise contravenes any of the provisions of this Act or the regulations or of any order made under this Act or the regulations, or makes a false statement in any application, form, return, account, record, statement or other document completed or made under this Act or the regulations, is guilty of an offence and is, where no penalty is specifically provided in this Act or the regulations liable on summary conviction,

- (a) in the case of a corporate body including a municipal authority, to a fine of not more than five hundred dollars; and
- (b) in the case of a person not being a municipal authority or corporate body to a fine of not more than one hundred dollars and, in default of payment to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

(2) Each and every continuance for a day or a part of a day of the failure to comply or other contravention referred to in subsection (1) constitutes a separate offence.

Each day's continuance a separate offence.

**29.**—(1) Subject to subsection (2), a member of the Authority shall not directly or indirectly, by himself or any person whomsoever in trust for him or on his account, take part in any contract or agreement entered into under this Act.

Members not to contract with Authority.

(2) Subsection (1) does not apply to a member of the Authority only by reason of his being a member of a company which enters into any contract or agreement under this Act, but that member shall not vote at the meetings of the Authority in respect of that contract, agreement or work and, if he does vote, his vote shall not be counted.

Saving.

**30.**—(1) All expenditures of the Authority, the Commission or the Local Advisory Commissions, including the remuneration of staff and payment of allowances, shall be met by the Minister of Finance, on the request of the Minister, out of the Consolidated Revenue Fund of the province from such funds as may be voted annually by the Legislature.

Outlays.

(2) All receipts of money by the Authority, the Commission or the Local Advisory Commissions shall be deposited in the Consolidated Revenue Fund when they come into the hands of the Authority, the Commission and Local Advisory Commissions, as the case may be.

Receipts.

**31.** Notwithstanding the repeal of The Water Resources and Pollution Control Act, 1966-67, the Act No. 57 of 1966-67, all

Saving.

contracts and agreements entered into or things done by the Newfoundland and Labrador Water Authority under that Act shall be valid and shall subsist as if they had been entered into or done by the Minister or the Authority under the powers conferred by this Act.



**CHAPTER 45**  
**An Act Respecting the Office of Clerk**  
**of the House of Assembly**

- 1.** This Act may be cited as The Clerk of the House of Assembly Act. Short title.
- 2.** The Clerk of the House of Assembly shall when appointed take the oath of office before the Speaker of the House of Assembly, who is hereby empowered to administer the same, as follows: Appointment of Clerk of Assembly; oath of office.
- “I, \_\_\_\_\_, appointed to the office of Clerk of the House of Assembly of Newfoundland, do swear that I will make true entries, remembrances and journals, of the things done and passed in the said Assembly.”.
- 3.** The Clerk Assistant of the House of Assembly shall when appointed take the oath of office before the Speaker of the House, who is hereby empowered to administer the same, as follows: Appointment of Clerk Assistant; oath of office.
- “I, \_\_\_\_\_, appointed to the office of Clerk Assistant of the House of Assembly of Newfoundland, do swear that I will diligently, faithfully and impartially discharge the duties of Clerk Assistant to the House of Assembly, to the best of my knowledge and ability.”.
- 4.** The Clerk and Clerk Assistant of the Assembly shall have the custody of and be responsible for the safe-keeping of the records of the House and all despatches, bills, petitions and documents presented to or laid on the table of the House of Assembly, and shall produce the same when required by the Speaker or by his order on motion of any member of the House. Duties of Clerk and Clerk Assistant.
- 5.** The general duties of the clerks of the House of Assembly, where no special provision is made, shall be similar to those of the clerks of the House of Commons in England, according to the practice of Parliament, or as may be provided by resolution of the House of Assembly. Similar to those in Imperial Parliament.





## CHAPTER 46

### An Act Respecting the Payment of Bounties on the Construction of Coasting Vessels

1. This Act may be cited as The Coasting Vessels (Bounties) Act. Short title.
  
2. In this Act Interpretation.
  - (a) "bounty" means a bounty payable in accordance with this Act on the construction of a vessel;
  - (b) "coasting trade" means the carrying of goods but not passengers from one port to another in Newfoundland or from ports outside Newfoundland to ports in Newfoundland or to ports outside Newfoundland from ports in Newfoundland;
  - (c) "coasting vessel" means a vessel engaged in the coasting trade;
  - (d) "director" means the Director of Vessel Construction and Inspection appointed in accordance with The Fishing Ships (Bounties) Act;
  - (e) "inspector" means an inspector appointed in accordance with The Fishing Ships (Bounties) Act and includes any classification society or similar organization approved by the Minister;
  - (f) "length overall" or "overall length" means the length of a vessel from the forward part of the stem to the after side of the rim timbers;
  - (g) "Minister" means the Minister of Fisheries;
  - (h) "permit" means a permit to build a vessel issued in accordance with Section 4;

- (i) "registered gross tonnage" or "gross registered tons" means the gross tonnage of a vessel as shown on the register of the vessel;
- (j) "regulations" means regulations made under this Act;
- (k) "ton" or "tonnage" means registered gross tonnage where the reference is to the payment of bounty and underdeck tonnage where the reference is to timber sizes forming the scantlings of vessels;
- (l) "underdeck tonnage" or "tons underdeck" means the tonnage contained within the space below the main deckline of a vessel and derived by the following formula

$$L \times B \times D \times .75$$

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100

where L represents the length in feet of the vessel on the load water line, B represents the breadth amidship at deckline in feet inside the ceiling and D represents the depth amidship in feet from the top of the beam at the centre line to the top of the ceiling on a flat bottom;

- (m) "vessel" includes every description of vessel suitable in the opinion of the Minister for use in the coasting trade and propelled by means other than sail or oars.

Permit to  
build, etc.

**3.—(1)** Any person who intends to apply for the payment of bounty shall, subject to subsection (3), before he lays the keel, apply to the Minister for a permit to build the vessel in respect of which he intends to apply for bounty and shall, in respect of the vessel, at the time he makes his application supply the Minister with

- (a) plans and specifications of the vessel or a model on a scale approved by the director or sufficient data from which plans may be prepared;
- (b) information on the make and type of engine to be installed;

- (c) such information as the Minister requires to show the applicant's ability to complete the building of the vessel; and
- (d) any other information which the Minister requires.

## (2) To qualify for a permit an applicant

Qualifications for permit.

- (a) who is an individual must be and shall satisfy the Minister that he is
  - (i) a British subject and a *bona fide* resident of Newfoundland,
  - (ii) applying on his own behalf and not on behalf of some other person;
- (b) which is a partnership, company, co-operative society or any other body, whether or not it is incorporated, shall satisfy the Minister
  - (i) that at least fifty per centum of its membership is made up of British subjects who are *bona fide* residents of Newfoundland or that the controlling interest in it is and will continue to be held by British subjects who are *bona fide* residents of Newfoundland,
  - (ii) that it is applying on its own behalf and not on behalf of some other person;
- (c) shall satisfy the Minister that he has had experience in the coasting trade; and
- (d) shall give an undertaking to the Minister that during the period of ten years from the date of final payment of bounty he will in all respects comply with the *Canada Shipping Act* insofar as it applies to the vessel.

- (3) An applicant may, with the approval of the Minister, assign his permit to another person if that other person is eligible for a permit, notwithstanding that construction of the vessel in re-

Assignment of permit.

spect of which the permit was granted has begun, and this Act applies to that other person and to the vessel as if that other person had been the first applicant.

Minister may issue permit.

**4.—(1)** The Minister may issue a permit after he is satisfied with the information supplied to him under Section 3 and that the applicant has applied in good faith.

Director to advise applicant of other Acts and regulations.

(2) If the director has reason to believe that the applicant will have to conform with any other Act of the Legislature or of the Parliament of Canada or with any regulation made thereunder he shall so advise the applicant but nothing in this subsection shall be deemed to impose a duty on the director to see that the applicant conforms with the other Act or regulation.

Bounties; on what conditions payable.

**5.** Subject to this Act, the Minister shall pay bounty on vessels which are

- (a) built under a permit;
- (b) built in Newfoundland by an approved builder in accordance with the regulations and with the *Canada Shipping Act*;
- (c) newly built with new materials;
- (d) equipped in Newfoundland with new materials;
- (e) fitted with motor power in accordance with Section 7;
- (f) completed within two years of the issue of the permit; and
- (g) registered in Canada.

Equipment.

**6.—(1)** Every vessel built under a permit shall be equipped with chains which have been subject to tests approved or prescribed by the director and with anchors, steering-gear, pumps, rigging, and other running gear which, in the opinion of the director, is essential and suitable to her tonnage.

Equipment to be new.

(2) All equipment required under subsection (1) shall be new.

(3) Where a vessel built under a permit is fitted with a deckhouse, the deckhouse shall be of a size and construction which the Minister approves. Deckhouse.

**7.**—(1) Subject to subsection (2), every vessel built under a permit shall be equipped with a new engine which is of diesel type and which the Minister has approved for installation in the vessel to provide propulsion. Engines.

(2) A vessel built under permit may be fitted with an engine which is not of diesel type but is adapted for use of light fuel oil if it appears expedient to the Minister to permit its use in the vessel to provide propulsion. Idem.

**8.** Subject to this Act, the Minister shall not pay bounty in respect of any vessel unless an inspector has inspected and approved the sizes of scantlings for use in the vessel and surveyed the vessel and given a certificate of each survey to the Minister Survey for bounty.

- (a) when the keel has been laid and the stem and stern posts have been erected;
- (b) when the frames, beams and knees are in place and before they are covered by planking or plating;
- (c) when the vessel has been plated, or planked and caulked and she is ready for launching; and
- (d) when the vessel has been completed, with the gear and equipment fitted and has had a sea trial satisfactory to the Minister.

**9.**—(1) Subject to this Act, the Minister shall pay bounties under this section only in respect of vessels Bounties payable in respect of coasting vessels only.

- (a) which the owners or applicants for permits undertake in writing to use mainly in the coasting trade of Newfoundland for a period of ten years from the date of issue by the director of the certificate referred to in Section 11;
- (b) which are of a type and structure suitable in the opinion of the Minister for use in the coasting trade of Newfoundland; and
- (c) for which the Minister has issued a permit after the passing of this Act.

Rates of  
bounty.

(2) The bounty payable

(a) in respect of a vessel for which the Minister issued a permit before the first day of February, 1962, is

- (i) one hundred and twenty dollars a ton if the vessel is not less than fifteen tons and not more than twenty-five tons,
- (ii) two hundred dollars a ton if the vessel is more than twenty-five tons and not more than sixty tons,
- (iii) two hundred and fifty dollars a ton if the vessel is more than sixty tons and not more than one hundred tons, and
- (iv) three hundred dollars a ton if the vessel is more than one hundred tons and not more than four hundred tons; and

(b) in respect of a vessel for which the Minister issued a permit on or after the first day of February, 1962, is

- (i) one hundred and twenty dollars a ton if the vessel is not less than fifteen tons and not more than twenty-five tons,
- (ii) two hundred dollars a ton if the vessel is more than twenty-five tons and not more than sixty tons,
- (iii) two hundred and fifty dollars a ton if the vessel is more than sixty tons and less than one hundred tons, and
- (iv) one hundred and fifty dollars a ton if the vessel is one hundred tons or more and not more than four hundred tons.

Forfeiture  
where vessel  
diverted from  
coasting trade  
before bounty  
paid.

**10.**—(1) Whenever any person builds a vessel under a permit and, before he has received the bounty payable to him in respect of that vessel,

- (a) he sells the vessel to a person not mainly engaged in the coasting trade or for purposes other than use mainly in the coasting trade or causes or allows the vessel to be diverted in any manner whatsoever to be used mainly for any purpose other than in that trade;
- (b) he sells or assigns the vessel to any person who is not eligible to receive a permit; or
- (c) he mortgages the vessel to any person without the prior written consent of the Minister,

bounty shall not be paid to any person in respect of that vessel.

(2) Whenever any person builds a vessel under a permit and receives bounty or an advance on bounty in respect of the vessel and within ten years after the date of the issue of the certificate by the director under Section 11

Forfeiture  
where vessel  
diverted after  
bounty paid.

- (a) he sells the vessel to a person not mainly engaged in the coasting trade or for purposes other than use mainly in the coasting trade or causes or allows the vessel to be diverted in any manner whatsoever to be used mainly for any purpose other than in that trade;
- (b) he sells or assigns the vessel to any person who is not eligible to receive a permit;
- (c) he mortgages the vessel to any person without the prior written consent of the Minister; or
- (d) the vessel is lost,

he shall immediately repay to the Minister the amount of the bounty or of the advance or such portion of the amount as the Minister deems fit and the person who received the bounty or advance and any other person to whom the vessel comes by sale, transfer, mortgage, operation of law or otherwise shall become and continue liable for the repayment of the bounty or the advance or the portion of either of them.

- Mortgage. (3) The Minister may require any person who builds a vessel under a permit and receives bounty in respect of the vessel to execute and deliver to him a statutory mortgage made and registered in accordance with the *Canada Shipping Act* to secure the repayment of the bounty or any advance or the portion of either of them as long as there is any actual or contingent liability for the repayment of the bounty or any portion of it.
- Recovery. (4) The Minister may recover any money owing to him under this section as a debt due Her Majesty in right of Newfoundland.
- Bounty to be repaid once only. (5) Nothing in this section requires the bounty or any portion of it to be repaid to the Minister more than once.
- Release of mortgage. (6) The Minister may where he deems it desirable so to do release any mortgage given under this section without repayment of the bounty by the mortgagor.
- Owner to furnish Minister with statements on use of vessel. (7) The owner of every vessel referred to in subsection (2) shall on or before the 1st day of March in each and every year during the ten-year period relating to that vessel referred to in that subsection and at such other times as the Minister prescribes furnish the Minister with
- (a) a statement of ownership;
  - (b) an affidavit or statutory declaration to the effect that the vessel is being used mainly in the coasting trade;
  - (c) a statement showing the trade engaged in, the routes followed and the sizes and kinds of cargo carried by the vessel during the twelve-month period ended on the thirty-first day of December last preceding; and
  - (d) such other information in respect of the operation of the vessel as the Minister requires.
- Use of vessels in seafishery. (8) Notwithstanding this Act, a vessel of 75 tons or more underdeck on which bounty has been paid under this Act may be used in the seafishery of Newfoundland and the use of such

a vessel in that fishery is for purposes of this Act deemed to be use in the coasting trade.

(9) For purposes of subsection (8) any period of time spent in preparing or outfitting a vessel for the sealfishery and in discharging the catch of seals from the vessel is deemed time spent in the sealfishery.

Time in sealfishery deemed spent in coasting trade.

11. Subject to this Act, when the Minister receives a certificate from the director that a vessel has been built and surveyed in accordance with this Act and is otherwise qualified for a bounty, he shall cause the bounty to be paid from funds voted by the Legislature, and the bounty may be paid to the person to whom the permit was issued or to his executors, administrators or assigns.

Payment of bounty.

12.—(1) The right to receive payment of a bounty accrues upon the final survey of a vessel and upon her being registered, but the Minister may cause to be paid such advances as he may think fit upon the certificate of the first, second and third surveys provided for in Section 8, but the total amount which the Minister may pay under this section by way of advances shall not exceed in all three-quarters of the bounty estimated to be due in respect of the vessel upon completion.

Accrual of right to bounty.

(2) Any person who receives an advance under subsection (1) and fails to complete the vessel within the time specified in this Act shall repay to the Minister in full the amount of the advance and the Minister may recover it as a debt due Her Majesty in right of Newfoundland.

Recovery of advances.

13.—(1) The owner of a vessel on which bounty has been paid shall keep the hull and engines and equipment thereof in good repair and in all respects comply with the *Canada Shipping Act* insofar as it applies to the vessel and otherwise show good ship's husbandry during a period of ten years from the date of issue by the director of the certificate referred to in Section 11.

Owner to keep hull and engines in good condition.

(2) An inspector on instructions from the Minister may at any time for the purpose of enforcing subsection (1) inspect the hull, engine and equipment of any vessel referred to in that subsection.

Inspector may inspect vessel, etc.

Minister may make order because of failure to comply with subsection (1).

(3) When an inspector reports to the Minister the results of his inspection under subsection (2), the Minister may make such order as he deems fit in respect of the maintenance, repair or cleaning of the hull, engine or equipment of the vessel and the repayment to the Minister of the whole or any part of the bounty because of failure to comply with subsection (1).

Regulations.

**14.**—(1) Subject to the approval of the Lieutenant-Governor in Council, the Minister may make such regulations as he deems advisable for the more effective carrying out of the provisions and purposes of this Act and in particular, but without limiting the generality of the foregoing, may make regulations

- (a) providing for the designation by the Minister of persons as approved builders for the purpose of building ships in accordance with this Act;
- (b) prescribing the requirements and qualifications which a person shall meet and fulfil in order to be designated as an approved builder for the purpose of this Act;
- (c) prescribing the standards and specifications of materials to be used in ships built under permit;
- (d) prescribing the specifications to be met in the construction of ships under permit;
- (e) prescribing the conditions under which ships built under permit shall be built so as to provide adequate support for them while they are under construction and to provide reasonable protection for them against damage by sun, wind and weather.

Publication of regulations.

(2) Regulations made under subsection (1) shall have effect from the date of publication in *The Newfoundland Gazette* or such later date as may be stated in the regulations, and the Minister shall lay them before the Legislature within fifteen days after they are made, if the Legislature is then in session, and, if it is not, then within fifteen days of the commencement of the next ensuing session.

**15.** The Minister may prescribe such forms as he may deem necessary for effecting the purpose of this Act and the regulations.

Forms.

**16.** Any person required under this Act to furnish information or issue a certificate who, in furnishing the information or issuing the certificate, makes any statement which he knows to be false in any material particular or recklessly makes any statement which is false in any material particular, or who refuses or fails in any respect to comply with subsection (7) of Section 10 is guilty of an offence and liable on summary conviction to a fine not exceeding five hundred dollars or to imprisonment for a period not exceeding four months or to both such fine and imprisonment.

Penalty.

**17.** Bounties shall be paid under The Shipbuilding (Bounties) Act, chapter 221 of the Revised Statutes of Newfoundland, 1952, in respect of vessels for use in the trade of Newfoundland to any person to whom a permit to build was issued under that Act as if that Act had not been repealed.

Bounties payable under The Shipbuilding (Bounties) Act.





## CHAPTER 47

### An Act Respecting the Encouragement of Cold Storage

**1.** This Act may be cited as The Cold Storage (Encouragement) Act.

Short title.

**2.** It shall be lawful for the Lieutenant-Governor in Council to guarantee, on behalf of the province for one or more years not exceeding fifteen, the annual payment to any person, firm or company engaged in the business of cold storage and other business connected with the fisheries and bait supply of the province, of a sum by which the net annual profits of such person, firm or company may be less than five per centum on the capital invested by any such person or paid up in any such company, provided that the total amount of such guarantee to all persons or companies shall be limited to an amount of capital which shall not exceed five hundred thousand dollars and shall be limited to a total amount of payment in any one year not exceeding five per centum upon the capital actually paid off in cash. Such guarantee shall be subject to such terms and conditions, as to the annual volume of work, class of fish handled, prices to be paid for fish, countries to which fish is to be exported, and location of plants as to the Lieutenant-Governor in Council may appear expedient.

Respecting certain guarantee to cold storage companies.

**3.** All plant, machinery, implements, apparatus, supplies and material necessary for the installation of the business of such person, firm or company shall be admitted into the province free of duty.

Machinery to be exempt from duty.

**4.** The Lieutenant-Governor in Council may enter into contracts with any person, firm or company for the construction, equipment and maintenance in good and efficient working order of public cold storage plants, stores or warehouses equipped with refrigeration in Newfoundland, and suitable for the preservation of all fish bait and food products.

Respecting contracts for maintenance and operation of plants.

Location of plants to be subject to approval.

**5.** The locations, plans and specifications of every such plant, store or warehouse, its equipment and the amount to be expended thereon, shall be subject to the approval of the Lieutenant-Governor in Council.

Respecting subsidies.

**6.** The Lieutenant-Governor in Council may, out of any moneys appropriated by the Legislature for the purpose, grant towards the construction of any such plant, store or warehouse a subsidy not exceeding, in the whole, thirty per centum of the amount expended or approved of in such construction and equipment and payable in instalments as follows:—Upon such plant, store or warehouse being completed, and cold storage at suitable temperatures being provided therein, all to the satisfaction of the Minister of Fisheries, a sum not exceeding fifteen per centum of the amount so expended; and at the end of the first year thereafter, the balance of the said thirty per centum, provided the plant, store or warehouse is maintained and operated to the satisfaction of the Minister of Fisheries.

Respecting inspection.

**7.** The Minister of Fisheries may order and cause to be maintained an inspection and supervision of the sanitary conditions, maintenance and operation of such plant, store or warehouse, and may regulate and control the temperatures to be maintained therein, in accordance with the regulations to be made as hereinafter provided.

Rates and tolls to be subject to approval.

**8.** The rates and tolls to be charged in such plant, store or warehouse shall be subject to the approval of the Lieutenant-Governor in Council.

Lieutenant-Governor in Council may make rules.

**9.** The Lieutenant-Governor in Council may make such regulations as he considers necessary in order to secure the sufficient enforcement and operation of this Act, and he may by such regulations impose penalties not exceeding fifty dollars on any person offending against them, and the regulations so made shall be in force from the date of their publication in *The Newfoundland Gazette*, or from such other date as is specified in the proclamation in that behalf.

Bonus on turbot, etc., exported.

**10.**—(1) For the purpose of assisting in the creation of a market demand for our less well known fishes, such as turbot, caplin and plaice, it shall be lawful for the Lieutenant-Governor in

Council to contract with any person, firm or company (hereinafter in this Act called "the Company") engaged in the business of cold storage and other business connected with the fisheries and bait supply of the province for the granting to the Company of a bonus not exceeding one cent per pound on all fresh or frozen fish, other than codfish, halibut and herring exported by the Company from its cold storage warehouses or plants in good condition in any one year of such term not to exceed ten years in all as may be fixed by such contract.

(2) The maximum amount of the bonus payable on all fresh or frozen fish other than codfish, halibut and herring, to the Company under the last preceding subsection in any one year of the said term, shall not exceed seventy-five thousand dollars (\$75,000) and shall be calculated whichever is greater either

- (a) according to the capacity of the cold storage plants or warehouses to be erected by the Company in compliance with the conditions of such contract in which case it shall not exceed four hundred dollars for a cold storage capacity of one hundred thousand pounds of fish and so on in proportion to the cold storage capacity of the said plants or warehouses: Provided that the total amount recoverable by the Company under this subsection for any year shall under no circumstances exceed the equivalent of one cent per pound upon fish other than codfish, halibut and herring exported fresh or frozen during the said year; or
- (b) at the rate of one-half cent per pound on all fish other than codfish, halibut and herring, exported by the Company from the cold storage plants or warehouses in any one year of such term: Provided, however, that the total bonus payable in any year under any such contract shall not exceed the sum of seventy-five thousand dollars (\$75,000).

(3) Every such contract shall be subject to and shall contain the following conditions, namely:

- (a) That all cold storage plants and warehouses thereby required to be erected shall be completed and in operation within five years from the date of such contract.

- (b) That the Company shall reserve in each of its warehouses situated outside St. John's ten per centum of the entire cold storage space of such warehouse for the storage of bait, and in its warehouse, if any, in St. John's, such space, not exceeding ten per centum of the entire cold storage space thereof, as may be fixed by such contract for the same purpose, and shall keep such reserved spaces available for the cold storage of such bait as the Lieutenant-Governor in Council may from time to time be desirous of storing therein, and store such bait therein free of charge.
- (c) That the Lieutenant-Governor in Council may from time to time permit the Company to use any part or the whole of such reserved storage space upon such terms as may be agreed upon, and if the consideration for such permission shall at any time take the form of the supply of bait by the Company to the Lieutenant-Governor in Council, such bait shall be supplied at its cost to the Company without allowance for any rental charge for the storage thereof, and in the event of any dispute as to the cost price of such bait the same shall be determined by a Board consisting of the Minister of Fisheries, a representative nominated by the Company, and a representative nominated by the Newfoundland Board of Trade.
- (d) That the Company shall sell bait to Newfoundland vessels engaged in the Bank fishery at a price to yield to the Company a reasonable profit above the cost of such bait delivered to the purchaser or his agent, such price to be fixed by the Board hereinbefore mentioned.
- (e) That the Company shall not export any squid, caplin or herring for any other than food purposes, nor shall it within the province sell any fishes for bait to any but Newfoundland fishermen, and on the other hand the Lieutenant-Governor in Council shall not supply any bait to vessels engaged in the Bank fishery, when the Company has bait for sale on the market at the rates aforesaid.

**11.** No payment of bonus shall be made under the preceding section except upon the certificate of the Auditor General of Newfoundland. In order to obtain such certificate the Company shall furnish the Minister of Finance at the end of each year during the said term of years a full and correct statement of the quantities of each such fish exported by the Company for the preceding year and shall afford all proper facilities to the Auditor General to make a complete examination of the books, accounts and vouchers of the Company relative thereto in conjunction with an auditor to be appointed by the Company. In the event of any dispute arising between the two auditors in relation to the said statement, the same shall be referred to the determination of a public chartered accountant as umpire, to be appointed by the two auditors. The award of such umpire shall be final and conclusive.

Bonus, how  
obtained.





## CHAPTER 48

### An Act Respecting the Establishment and Operation of a College of Fisheries, Navigation, Marine Engineering and Electronics

1. This Act may be cited as The College of Fisheries Act. Short title.
2. In this Act, Interpretation.
  - (a) "Board" means the Board of Governors of the College of Fisheries, Navigation, Marine Engineering and Electronics, constituted by Section 9;
  - (b) "College" means the College of Fisheries, Navigation, Marine Engineering and Electronics, established under this Act;
  - (c) "Her Majesty" means Her Majesty in right of the province;
  - (d) "Minister" means the Minister of Economic Development;
  - (e) "President" means the President of the College; and
  - (f) "Vice-President" means the Vice-President of the College.
3. The Lieutenant-Governor in Council may establish in the province a College, to be known as the College of Fisheries, Navigation, Marine Engineering and Electronics, designed to furnish technical and vocational training and to conduct research in Lieutenant-Governor in Council may establish College.
  - (a) fisheries;
  - (b) navigation;

- (c) marine engineering;
- (d) electronics; and
- (e) any other science or art relating to any of the matters referred to in paragraph (a), (b), (c) or (d).

College  
departments.

**4.** The College shall consist of

- (a) six departments of instruction, each to be responsible for one of the following courses of study, namely,
  - (i) naval architecture,
  - (ii) marine engineering and gear technology,
  - (iii) fish processing technology and engineering,
  - (iv) physics, mathematics and electronics,
  - (v) extension studies, and
  - (vi) social studies;
- (b) two service departments, one to be responsible for general fisheries education and the other for consultation and service; and
- (c) such other departments as may be prescribed by the Board, with the prior approval in writing of the Minister.

Title to  
property  
vested in  
Her Majesty.

**5.** Subject to the powers conferred on the Board by this Act, title to all real and personal property acquired for the College or for any of the other purposes of this Act, whether by deed, lease or otherwise, shall be acquired by and in the name of Her Majesty.

Transfer  
of certain  
property.

**6.** All rights in respect of the land described and delineated in Section 1 of 22 Geo. V., Cap. 13 entitled "An Act Relating to The Memorial University College, St. John's", which were transferred by Section 2 of The Memorial University (Property)

Act to the Memorial University of Newfoundland are extinguished, and the said land together with all buildings, erections and structures situated thereon or therein are vested in Her Majesty and are set aside for the College, under the management and control of the Board constituted by this Act, and compensation shall not be paid to the Memorial University of Newfoundland in respect of the rights extinguished by this section.

**7.** The provisions of The City of St. John's Act or of any Act substituted therefor or of any other Act from time to time in force relating to the City of St. John's which permit the taking of land either for streets or for any other purpose whatsoever shall not apply to any of the real property set aside or acquired by or under this Act for the College.

Provisions re expropriation of land not to apply to College property.

**8.** All real property acquired by or under this Act for the College or vested in the Board shall be exempted from provincial, municipal or other local taxation while the property is used for the purposes of this Act.

Exemption from tax.

**9.—(1)** There shall be a Board to be known as the Board of Governors of the College of Fisheries, Navigation, Marine Engineering and Electronics consisting of not more than twelve members.

Constitution of Board.

(2) The Board is a corporation.

Corporation.

(3) The Lieutenant-Governor in Council shall appoint the members of the Board and shall designate one of them as chairman and another as vice-chairman.

Appointment of members.

(4) All members of the Board, including the chairman, shall hold office for a period of three years and are eligible to be reappointed.

Term.

(5) The Deputy Minister of Fisheries, the Deputy Minister of Education, the Deputy Minister of Provincial Affairs, and the Director of Technical and Vocational Training appointed under The Technical and Vocational Training Act, shall be members of the Board.

Certain officials to be members of Board.

- Quorum. (6) A vacancy in the membership of the Board does not impair the right of the remaining members to act, and one-third of its members constitutes a quorum of the Board.
- Expiration of term. (7) When the term of a member of the Board expires, he continues to be a member until his successor is appointed.
- Absence of chairman. (8) The vice-chairman shall, in the absence of the chairman for whatever cause, possess and exercise the powers and perform the duties of the chairman.
- Temporary chairman. (9) When the chairman and the vice-chairman are not present at any meeting of the Board before the expiration of twenty minutes from the time set for the meeting, a majority of a quorum of the Board then present may appoint a chairman for that meeting from among its membership.
- Remuneration and expenses. (10) Members of the Board, including the chairman, shall be paid such remuneration as the Lieutenant-Governor in Council approves and all reasonable expenses incurred in connection with the work of the Board.
- Duties of Board. **10.** Subject to this Act, the Board shall conduct, manage and control the College, its properties, revenues, expenditures, business and affairs.
- Powers of Board. **11.** The Board may appoint such committees as it deems desirable for the execution of the work of the Board and delegate to the committees such of the powers of the Board as the Board deems fit, and after consultation with the President and subject to the prior approval in writing of the Minister, the Board may
- (a) appoint, promote or remove lecturers, teachers and all other employees whatsoever at the College, except the President and the Vice-President;
  - (b) establish and operate faculties, departments, chairs, exhibitions, training ships, scholarships, prizes and research facilities;
  - (c) fix and collect all fees and charges to be paid to the College;

- (d) fix and pay all benefits and allowances to students of the College;
- (e) grant diplomas and certificates in courses of study which do not lead to a degree;
- (f) accept grants, gifts and bequests to the College and payments for services and research;
- (g) exercise disciplinary control of students of the College with power to fine or expel such students;
- (h) select a seal and arms for the College and retain sole custody and use thereof;
- (i) appoint and pay advisory boards of persons from outside the College;
- (j) encourage and provide for facilities and grants for original research in subjects related to the fisheries; and
- (k) perform such other functions as it deems advisable for the proper administration and advancement of the College which are not inconsistent with this Act.

**12.** Subject to the prior approval of the Minister, the Board may, after consultation with the President, make bye-laws, not inconsistent with this Act, for the establishment, conduct, management and control of the College or any part of it, its properties, revenues, expenditures, business and affairs, the entering into agreements and contracts by the Board with any person, the calling of meetings of the Board and in general relating to all things that may be necessary for carrying out the objects of the Board and for the exercise of any of the powers conferred on it by this Act. Bye-laws.

**13.** Subject to the prior approval of the Lieutenant-Governor in Council, the Board may appoint a secretary and such other officers and staff as may be necessary who may be remunerated out of the funds of the Board, and the secretary may be a member of the Board or a person who is not a member of the Board, as may be deemed expedient. Secretary and staff of Board.

Actions  
against  
members  
of Board.

**14.** An action shall not be brought against any member of the Board for anything done or omitted by him in the execution of his duties as such member, without the prior written consent of the Attorney General.

Yearly  
budget to be  
submitted.

**15.** The Board shall, not later than ninety (90) days after the day on which the members of the Board take office in the first financial year and not later than the first day of November in each and every succeeding financial year, prepare and adopt and submit to the Minister a budget containing estimates of all sums required during the next financial year for the purposes of the Board, and in each budget there shall be set forth the estimated revenue and expenditure in such detail and in such form as the Minister prescribes.

Approval of  
Minister.

**16.** The Minister may approve or disapprove a budget submitted by the Board.

Board limited  
to budget.

**17.** Except with the approval of the Minister, the Board shall not in any year incur, enter upon, or contract or become liable for an expenditure or indebtedness beyond or in excess of the estimated amount of expenditure set out in an approved budget.

General  
funds of  
Board.

**18.** The general funds of the Board shall consist of

- (a) any moneys appropriated by the Legislature for the College or for the purposes of the Board;
- (b) any gifts or bequests of money received by the Board for its general purposes and not subject to any special trusts or conditions;
- (c) any moneys which the Board may collect for the use of the College or its facilities, or for research; and
- (d) any other moneys received by the Board for its general purposes which are not referred to in paragraph (a), (b) or (c).

Expenditure.

**19.** Subject to Section 17, the Board may pay all necessary expenses of its operations out of its general funds.

**20.**—(1) The Board shall in its corporate capacity be trustee of all moneys and property given or bequeathed for the purposes of the College, its staff or students, otherwise than from the public revenues, except where some other trustee is appointed by the donor or testator.

Trust funds  
of Board.

(2) Where property or moneys are given or bequeathed to the Board in trust for special purposes, the Board shall, as the trust may require, hold and maintain such property and invest such moneys and hold them in trust for the purposes for which they were bequeathed or given, or expend such moneys for the purposes indicated by the testator or donor, and the moneys shall not form part of the general funds of the Board.

Trust funds  
for special  
purposes.

**21.** The Board may invest any trust moneys and may from time to time alter such investments as it may think fit, subject always to the general law governing trustees and to the provisions of any will, trust deed or like document governing any specific trust.

Investment of  
trust funds.

**22.** The financial year of the Board shall run from April 1st. to March 31st.

Financial  
year.

**23.** The chairman of the Board shall cause regular minutes of the meetings of the Board and full and complete books of account to be kept.

Minutes  
and records.

**24.**—(1) The Board shall, not later than the thirty-first day of May in each calendar year, prepare and submit to the Minister a financial statement setting forth the assets and liabilities of the Board and its receipts and expenditure for its financial year immediately preceding that date, together with a report concerning the work of the Board during that financial year.

Financial  
statement  
and report.

(2) The Board shall furnish to the Minister such other reports relating to the College as he may request from time to time covering such matters as the Minister may indicate in his request.

Additional  
reports.

(3) The financial statement referred to in subsection (1) shall be signed by the chairman and one other member of the Board.

Financial  
statement  
to be signed.

- Audit.**                   **25.**—(1) The Auditor General shall audit the accounts of the Board and has at all times authority to call for and shall be supplied by the Board with all books and vouchers which he deems necessary for his audit.
- Examination of financial statement.**                   (2) Every financial statement of the Board submitted to the Minister under Section 24 shall be examined by the Auditor General, and the Auditor General shall, before the thirty-first day of August next following the financial year covered by such statement, forward to the Minister an examined copy of the statement together with a copy of any report on that statement which he may have made to the Board.
- President.**                   **26.**—(1) There shall be a President of the College who shall be the Chief Executive Officer thereof, and he shall be appointed by the Lieutenant-Governor in Council.
- Duties of President.**                   (2) The President is charged with the general supervision and direction of the administration of the College and of the officers, lecturers and personnel thereof in the performance of their duties.
- Idem.**                   (3) Subject to this section, the President is responsible to the Board and shall exercise such powers and perform such duties as are assigned to him by the Board, and he is *ex officio* a member of all committees constituted by the Board.
- Idem.**                   (4) The President shall
- (a) make recommendations to the Board respecting appointments, promotions and removal of the personnel of the College; and
- (b) act as chairman of the department of consultation and be responsible for the work of that department.
- Report.**                   (5) The President shall report to the Board annually on the progress and efficiency of the work of the College and on any matter affecting its operation, and he shall report on any other matter relating to the College referred to him by the Board.

**27.** There shall be a Vice-President who shall be appointed by the Lieutenant-Governor in Council and who shall perform such duties as may be assigned to him by the President, and during the absence of the President, the Vice-President shall carry out the duties of the President.

Vice-President.

**28.** The salaries or other remuneration of the President, the Vice-President, lecturers, teachers and all other employees at the College and of all other employees of the Board shall be fixed from time to time by the Lieutenant-Governor in Council.

Salaries.

**29.—(1)** Subject to the prior approval of the Lieutenant-Governor in Council, the Board may make such regulations, not inconsistent with this Act, as it deems necessary or desirable for the more effective carrying out of the purposes of this Act according to its true spirit, intent and meaning and for dealing with any matters for which no express provision has been made or in respect of which only partial or imperfect provision has been made, and without limiting the generality of the foregoing may make regulations

Regulations.

- (a) providing for the effective use of the services and facilities provided by the College; and
- (b) prescribing the terms and conditions under which research may be conducted at the College.

(2) Regulations made under subsection (1) shall be published in *The Newfoundland Gazette* and shall have effect from the date of publication or from such later date as may be stated in the regulations and shall be laid before the Legislature within fifteen days after they are made, if the Legislature is then in session, and if not, then, within fifteen days after the commencement of the next ensuing session.

Publication.

**30.** Subject to the prior approval in writing of the Minister, the Board may make agreements with any person providing for the conduct of research at the College on behalf of that person and prescribing the terms and conditions under and consideration for which the research shall be conducted.

Agreements.

Power to establish pension schemes for President, Vice-President, lecturers, teachers, officers and other employees.

**31.**—(1) The Board may by regulations made in accordance with subsection (4) establish a pension scheme for the President, Vice-President, lecturers, teachers, officers and staff at the College and all other employees of the Board providing for

- (a) the payment of a pension, annuity, allowance or gratuity to any such person or to any of his beneficiaries or dependents on
  - (i) his retirement at a stated age or on account of permanent disability,
  - (ii) his illness or death before or after retirement, or
  - (iii) the termination from any cause whatsoever of his employment;
- (b) the grant of any other benefit whatsoever whether in cash or in services to any such person or to any of his beneficiaries or dependents; or
- (c) the payment or grant of any of the pensions, annuities, allowances, gratuities or benefits referred to in paragraphs (a) and (b); and
- (d) the terms and conditions upon which any of the pensions, annuities, allowances, gratuities or benefits referred to in paragraphs (a) and (b) will be paid or granted; and
- (e) the payment of contributions, if any, towards any such pension scheme to be made by the Board and by any of the persons to whom it applies, and the amounts of the contributions,

and different pension schemes may be established for the President and the Vice-President and for any other class of the persons referred to in this subsection.

Board may decide method of payment of pensions, etc.

(2) Subject to the approval of the Lieutenant-Governor in Council, the Board

(a) shall decide whether the pensions, annuities, allowances, gratuities or benefits made available under a pension scheme established pursuant to this section shall be paid or granted

- (i) out of the general funds of the Board,
- (ii) by contract with Her Majesty in right of Canada under the *Government Annuities Act* (Canada),
- (iii) by contract with an insurer authorized to carry on business in Newfoundland,
- (iv) by contract with Her Majesty in right of Newfoundland, or
- (v) in any other manner whatsoever; and

(b) may enter into any contract or undertaking and do all things necessary to give effect to a decision made in accordance with this subsection.

(3) The Board

(a) may deduct by instalments from the salary or other remuneration of a person, to whom a pension scheme established under this section applies, contributions, if any, payable by that person under the pension scheme and shall pay all instalments so deducted to the fund, person or company to which the contributions are payable under the pension scheme; and

(b) shall pay out of its general funds the contributions, if any, payable by the Board under the pension scheme.

Board may deduct contributions towards pension scheme.

(4) For the purpose of carrying out the objects of this section and giving full effect to its provisions according to their true intent, the Board may, subject to the approval of the Lieutenant-Governor in Council, make such regulations as in its opinion are necessary or desirable to provide for any pension scheme established under this section and for any matter connected therewith for which no express provision has been made by

Regulations.

this section or in respect of which only partial or imperfect provision has been made, and in particular, but without restricting the generality of the foregoing, may

- (a) provide for any of the matters referred to in subsection (1);
- (b) prescribe the class or classes of persons to which a pension scheme established under this section shall apply, with or without giving to the members of any such class the right exercisable, within a period to be prescribed in the regulations, to elect to be excluded from the pension scheme;
- (c) provide for counting towards the pension of any person to whom a pension scheme applies, all or any part of the service done by that person
  - (i) as a professor, lecturer or teacher at any educational institution in the province approved by the Lieutenant-Governor in Council for the purpose,
  - (ii) as an established or unestablished civil servant as defined by The Civil Service Act,
  - (iii) as a lecturer, teacher, officer or member of the staff at the College or other employee of the Board before the pension scheme was established, or
  - (iv) in any other capacity approved for the purpose by the Lieutenant-Governor in Council,

whether such service was done before or after the enactment of this Act, and prescribe the terms and conditions upon which such service may be counted;

- (d) provide that any pension scheme shall take effect from any date occurring between the first day of January, 1964, and the date of the coming into force of the regulations;

- (e) provide for the retirement of all lecturers, teachers and other employees of the Board on attaining the retirement age to be prescribed in the regulations or if they are unable to perform their duties owing to mental or physical incapacity; and
- (f) prescribe different retirement ages for men and women employees.

(5) Regulations made under subsection (4) have effect from the date of publication in *The Newfoundland Gazette* or from such later date as may be prescribed by the regulations, and the regulations shall be laid before the Legislature within fifteen days after they are made, if the Legislature is then in session, and if not, then, within fifteen days after the commencement of the next ensuing session.

Publication and effective date of regulations.

**32.** Notwithstanding the provisions of Section 6, it shall be lawful for the Lieutenant-Governor in Council to lease to the St. John's, Newfoundland, Branch No. 1 of the Royal Canadian Legion for such time and upon such terms as the Lieutenant-Governor in Council may deem fit that part of the lands set aside for the College of Fisheries under Section 6 which is set out and described in the Schedule hereto.

Provision for a lease to Royal Canadian Legion.

**33.** The amendments to the provisions of The College of Fisheries Act, 1964, contained in Section 2 and Section 3 of The College of Fisheries (Amendment) Act, 1968, the Act No. 49 of 1968, when proclaimed in force shall be deemed to be amendments to the corresponding provisions of this Act.

Effect of 1968 amendments when proclaimed.

#### SCHEDULE.

All that piece or parcel of land situate and being at Parade Street in the City of St. John's abutted and bounded as follows: Premising that a line joining the southwesterly corner of the Fisheries College Building to the point of beginning of the land herein described has a magnetic bearing south six degrees twenty-eight minutes west and relating all bearings herein thereto: Beginning at a point marked by an aluminium bar set in the easterly limit of Parade Street aforesaid, the said point being distant one hundred and ninety-eight feet and two-tenths

of a foot on a bearing of south six degrees twenty-eight minutes west from the aforesaid southwesterly corner of the Fisheries College Building; thence running by lands of the Department of Public Works south eighty-three degrees forty-three minutes east four hundred and nine feet and four-tenths of a foot to an iron bar and thence south forty-eight minutes west two hundred and twenty-two feet and three-tenths of a foot to an iron bar and thence north eighty-five degrees seventeen minutes west four hundred and nine feet and four-tenths of a foot to an aluminium bar; thence by lands of the Salvation Army north thirty-four degrees thirty-two minutes west eighteen feet and one-tenth of a foot to an aluminium bar and thence north seventy-six degrees forty-eight minutes west nine feet and ninety-five hundredths of a foot, more or less, to an iron bar set in the aforesaid easterly limit of Parade Street; thence by said easterly limit north six degrees seventeen minutes east two hundred and eighteen feet and one-tenth of a foot, more or less, to the point of beginning and containing an area of two acres and thirty perches.



## CHAPTER 49

### An Act Respecting the Establishment and Operation of a College of Trades and Technology

1. This Act may be cited as The College of Trades and Technology Act. Short title.
  
2. In this Act Interpretation.
  - (a) "Board" means the Board of Governors of the College constituted by Section 8;
  - (b) "College" means The College of Trades and Technology established by this Act;
  - (c) "Her Majesty" means Her Majesty in right of the province;
  - (d) "Minister" means the Minister of Education and Youth or such other Minister as may be appointed by the Lieutenant-Governor in Council;
  - (e) "President" means the President of the College;
  - (f) "regulations" means regulations made under this Act; and
  - (g) "Vice-President" means the Vice-President of the College.
  
3. There shall be established a College, to be known as "The College of Trades and Technology", for the purpose of providing such technical and vocational training programmes and research as are prescribed from time to time by the Board and approved by the Minister. Lieutenant-Governor in Council to establish College.

College departments.

**4.** The College shall consist of such departments of instruction and divisions of departments as are necessary for the proper functioning of the College as may be prescribed by the Board and approved by the Minister.

Management and control of assets.

**5.** The right of management and control of

- (a) the lands with buildings and improvements thereon, located within the City of St. John's, being the lands conveyed by Her Majesty to Technical College Building Corporation Limited pursuant to Section 3 of The Technical College and Vocational Schools Building Act, 1960, and leased to Her Majesty with the buildings and improvements thereon pursuant to Section 4 of the said Act;
- (b) the personal property situated on and within the said lands and buildings; and
- (c) all real and personal property hereafter acquired for the College or for any of the purposes of this Act, which property shall be acquired by and in the name of Her Majesty,

is vested in the Board which shall conduct the management and control thereof on behalf of the College, and administer the properties, revenues, expenditures, business and affairs of the College.

Provisions re-expropriation of land not to apply to College property.

**6.** The provisions of The City of St. John's Act or of any Act substituted therefor or of any other Act from time to time in force relating to the City of St. John's which permit the taking of land either for streets or for any other purpose whatsoever shall not apply to any real property the management and control of which is vested in the Board.

Exemption from tax.

**7.** All real property, the management and control of which is vested in the Board, shall be exempted from provincial, municipal or other local taxation while the property is used for the purposes of this Act.

Constitution of Board.

**8.—(1)** There shall be a Board to be known as the Board of Governors of The College of Trades and Technology which shall

be a corporation and shall consist of one *ex officio* member who shall be the President and not more than eleven members appointed by the Lieutenant-Governor in Council.

(2) All members of the Board, other than the *ex officio* member, shall hold office for a period of three years and are eligible to be reappointed.

Term.

(3) A vacancy in the membership of the Board does not impair the right of the remaining members to act, and one-third of its members constitutes a quorum of the Board.

Quorum.

(4) When the term of a member of the Board expires, he shall continue to be a member until his successor is appointed.

Expiration  
of term.

(5) The Lieutenant-Governor in Council shall designate one of the members of the Board as chairman and another as vice-chairman of the Board and when the chairman and the vice-chairman are not present at any meeting of the Board before the expiration of twenty minutes from the time set for the meeting, a majority of the Board members then present shall elect a chairman for that meeting from their own number.

Chairman and  
vice-chairman.

(6) Members of the Board, including the chairman and vice-chairman, may be paid such remuneration as the Lieutenant-Governor in Council approves and all reasonable expenses incurred in connection with the work of the Board.

Remuneration  
and expenses.

9. The Board may appoint such committees as it deems desirable for the execution of the work of the Board and delegate to the committees such of the powers of the Board as the Board deems fit, and after consultation with the President the Board may, subject to the regulations

Powers of  
Board.

- (a) appoint, promote or remove instructional and secretarial staff and all other officers or employees except the President and the Vice-President;
- (b) fix and collect all fees and charges to be paid to the College;
- (c) fix and pay all benefits and allowances to students of the College;

- (d) fix standards of admission of students to the College and set the conditions to be maintained by students during courses of study;
- (e) approve diplomas and certificates for courses of study which do not lead to a degree;
- (f) accept grants, gifts and bequests to the College and payments for services and research;
- (g) establish a code of discipline for the students of the College with power to expel such students and to delegate to the President the right to impose such fines as are prescribed in the code;
- (h) select a seal and arms for the College and retain sole custody and use thereof;
- (i) appoint advisory boards and pay those members thereof who are not employees of the College;
- (j) provide facilities and grants for research in subjects allied or related to technical and vocational education and prescribe the terms and conditions under which research may be conducted at the College;
- (k) provide for the effective use of the services and facilities provided by the College;
- (l) co-operate and enter agreements with other educational institutions for the establishment, maintenance and conduct of programmes of instruction leading to degrees, diplomas and certificates; and
- (m) perform such other functions as it deems advisable for the proper administration and advancement of the College which are not inconsistent with this Act.

## Regulations.

**10.** The Lieutenant-Governor in Council may make regulations for the conduct, management and control of the College or any part of it, administration of the properties, revenues, expenditures, business and affairs, the entering into agreements

and contracts by the Board with any person, the control of the Board in the implementation of its powers, the calling of meetings of the Board and in general relating to all things that may be necessary for carrying out the objects of the Board and for the effective exercise of any of the powers conferred on it by this Act.

**11.** An action shall not be brought against any member of the Board for anything done or omitted by him in the execution of his duties as such member, without the prior written consent of the Minister of Justice.

Actions against  
members of  
Board.

**12.—**(1) The Board shall, not later than a date to be set by the Minister in each and every succeeding financial year, prepare, adopt and submit to the Minister a budget containing estimates of all sums required during the next financial year for the purposes of the Board, and in each budget there shall be set forth the estimated revenue and expenditure in such detail and in such form as the Minister may prescribe.

Yearly budget  
to be submitted.

(2) The Minister may approve or disapprove a budget submitted by the Board.

Approval of  
budget.

(3) Except with the approval of the Minister, the Board shall not in any year incur, enter upon, or contract or become liable for an expenditure or indebtedness beyond or in excess of the estimated amount of expenditure set out in an approved budget.

Budget not to  
be excluded.

**13.** The general funds of the Board shall consist of

General funds  
of Board.

- (a) any moneys appropriated by the Legislature for the College or for the purposes of the Board;
- (b) any gifts or bequests of money received by the Board for its general purposes and not subject to any special trusts or conditions;
- (c) any moneys which the Board may collect for the use of the College or its facilities, or for research; and
- (d) any other moneys received by the Board for its general purposes which are not referred to in paragraph (a), (b) or (c).

- 14.** Subject to subsection (3) of Section 12, the Board may pay all necessary expenses of its operations out of its general funds.
- 15.**—(1) The Board shall in its corporate capacity be trustee of all moneys and property given or bequeathed for the purposes of the College, its staff or students, otherwise than from the public revenues, except where some other trustee is appointed by the donor or testator.
- (2) Where property or moneys are given or bequeathed to the Board in trust for special purposes, the Board shall, as the trust may require, hold and maintain such property and invest such moneys and hold them in trust for the purposes for which they were bequeathed or given, or expend such moneys for the purposes indicated by the testator or donor, and the moneys shall not form part of the general funds of the Board.
- 16.** The Board may invest any trust moneys and may from time to time alter such investments as it may think fit, subject always to the general law governing trustees and to the provisions of any will, trust deed or like document governing any specific trust.
- 17.** The financial year of the Board shall run from April 1 to March 31.
- 18.** The chairman of the Board shall cause regular minutes of the meetings of the Board and full and complete books of account to be kept.
- 19.**—(1) The Board shall, not later than the thirty-first day of May in each calendar year, prepare and submit to the Minister a financial statement setting forth the assets and liabilities of the Board and its receipts and expenditure for the financial year just ended, together with a report concerning the work of the Board during that financial year.
- (2) The Board shall furnish to the Minister such other reports relating to the College as he may request from time to time covering such matters as the Minister may indicate in his request.

(3) The financial statement referred to in subsection (1) shall be signed by the chairman and one other member of the Board.

Financial statement to be signed.

**20.**—(1) The Auditor General shall audit the accounts of the Board and has at all times authority to call for and shall be supplied by the Board with all books and vouchers which he deems necessary for his audit.

Audit.

(2) Every financial statement of the Board submitted to the Minister under Section 19 shall be examined by the Auditor General, and the Auditor General shall, before the thirty-first day of August next following the financial year covered by such statement, forward to the Minister an examined copy of the statement together with a copy of any report on that statement which he may have made to the Board.

Examination of financial statement.

**21.**—(1) There shall be a President of the College who shall be the chief executive officer thereof, and he shall be appointed by the Lieutenant-Governor in Council.

President.

(2) The President is charged with the general supervision and direction of the administration of the College and of the instructional and secretarial staff, officers and other employees in the performance of their duties.

Duties of President.

(3) The President shall be an *ex officio* member of all committees constituted by the Board, and shall exercise such powers and perform such duties as are assigned to him by the Board.

Idem.

**22.** There shall be a Vice-President who shall be appointed by the Lieutenant-Governor in Council and who shall perform such duties as may be assigned to him by the President, and during the absence of the President the Vice-President shall carry out the duties of the President.

Vice-President.

**23.** The salaries or other remuneration of the President, the Vice-President, instructional and secretarial staff and all other officers and employees of the Board shall be fixed from time to time by the Lieutenant-Governor in Council.

Salaries.

Pension  
provision.

**24.** The provisions of The Public Service (Pensions) Act shall apply to the President, Vice-President, instructional and secretarial staff and all other officers and employees of the Board, as if they were employees of the Government of Newfoundland and, subject to the exceptions and conditions prescribed in that Act, all such persons shall pay contributions to and participate in the pension plan established by that Act.



## CHAPTER 50

### An Act Respecting the Observance of Commemoration Day

1. This Act may be cited as The Commemoration Day Act. Short title.
  
2. In each and every year Sunday when it falls on the first day of July but otherwise the Sunday nearest to the first day of July shall be kept and observed in Newfoundland as and under the name of Commemoration Day, so that the deeds and sacrifices of those men and women of Newfoundland who took an active part in the World War of 1914-18 shall be kept in remembrance with honour and respect. Respecting  
Commemora-  
tion Day.





## CHAPTER 51

### An Act Respecting Commissioners to Administer Oaths.

- 1.** This Act may be cited as The Commissioners for Oaths Act. Short title.
- 2.**—(1) The Lieutenant-Governor in Council may, on the recommendation of the Attorney General, appoint such persons, being British subjects, as he thinks necessary to administer oaths and take and receive affidavits, declarations and affirmations within Newfoundland. Appointments in Newfoundland.
- (2) The persons appointed under subsection (1) shall be styled commissioners for oaths in and for Newfoundland and every such person shall write or stamp below his signature on every affidavit, declaration, affirmation or certificate made before or given by him the words "A Commissioner for Oaths in and for Newfoundland". Style.
- 3.**—(1) The Lieutenant-Governor in Council may, on the recommendation of the Attorney General, appoint such persons as he thinks necessary to administer oaths and take and receive affidavits, declarations and affirmations without Newfoundland for use in Newfoundland in or concerning any cause, matter or thing whether pending in any court in Newfoundland or in anywise concerning any of the proceedings in any court in Newfoundland or otherwise. Appointments without Newfoundland.
- (2) The persons appointed under subsection (1) shall be styled commissioners for oaths without Newfoundland, and every such person shall write or stamp below his signature on every affidavit, declaration, affirmation or certificate made before or given by him the words "A Commissioner for Oaths without Newfoundland". Style.

Barristers.

**4.** Every barrister while he is entitled to practise in Newfoundland is a commissioner for oaths and may exercise, either within or without Newfoundland, the powers conferred by this Act and on every affidavit, declaration, affirmation or certificate made before or given by him under those powers he shall write or stamp below his signature the word "Barrister".

Members of the House of Assembly.

**5.** Every member of the House of Assembly is, while he holds office and by virtue of his office, a commissioner for oaths and shall be so styled and may exercise within Newfoundland the powers conferred by this Act, and he shall write or stamp below his signature on every affidavit, declaration, affirmation or certificate made before or given by him the words "A Commissioner for Oaths in and for Newfoundland, being a M.H.A.".

Mayors.

**6.—(1)** The mayor or chairman, as the case may be, of a municipality is, by virtue of his office, a commissioner for oaths and shall be so styled and may exercise within Newfoundland the powers conferred by this Act, and he shall write or stamp below his signature on every affidavit, declaration, affirmation or certificate made before or given by him the words "A Commissioner for Oaths in and for Newfoundland, being the Mayor (or Chairman, as the case may be) of \_\_\_\_\_".

"Municipality" defined.

**(2)** For the purposes of this section "municipality" means the City of St. John's and a Town, Rural District, Local Government Area or Local Government Community established or organized under any general or special Act.

Welfare Officers.

**7.** All Welfare Officers appointed under The Department of Social Services and Rehabilitation Act, are, while they hold office and by virtue of their office, commissioners for oaths and shall be so styled and may exercise within Newfoundland the powers conferred by this Act, and each of them shall write or stamp below his signature on every affidavit, affirmation or certificate made before or given by him the words "A Commissioner for Oaths in and for Newfoundland, being a Welfare Officer appointed under The Department of Social Services and Rehabilitation Act".

Duration of appointments.

**8.—(1)** Every appointment made under subsection (1) of Section 2 or subsection (1) of Section 3 expires at the expiration of five years from the thirty-first day of December of the year in which it was made unless it is revoked at an earlier date.

(2) An appointment made under subsection (1) of Section 2 or subsection (1) of Section 3 may, on or before the date of its expiration, be renewed by the Lieutenant-Governor in Council for a period of five years from the date of its expiration and a renewed appointment may in like manner be further renewed.

Renewal of appointments.

9. Application for appointment under subsection (1) of Section 2 or subsection (1) of Section 3 or for renewal under subsection (2) of Section 8 shall be made to the Attorney General.

Applications.

10.—(1) An appointment made under subsection (1) of Section 2 or subsection (1) of Section 3 and every renewal under subsection (2) of Section 8 shall be evidenced by a certificate signed by the Minister of Provincial Affairs and issued to the person receiving the appointment.

Evidence of appointment.

(2) Each certificate issued under subsection (1) shall state the date on which the appointment expires and shall otherwise be in the form which the Attorney General prescribes.

Form of certificate.

(3) A certificate issued under subsection (1) purporting to be signed by the Minister of Provincial Affairs shall be received in any court in Newfoundland as *prima facie* evidence of the facts stated therein and of the authority of the person by whom the certificate purports to be signed without proof of the authorization of the form thereof or of the appointment or signature of the Minister of Provincial Affairs.

Certificate *prima facie* evidence.

11.—(1) Every commissioner for oaths appointed under subsection (1) of Section 2 or subsection (1) of Section 3 shall write or stamp on every affidavit, declaration, affirmation or certificate made before or given by him the date on which his appointment expires.

Indication of expiry of appointment.

(2) A commissioner for oaths who fails to comply with subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding ten dollars and costs.

Penalty.

12.—(1) The Lieutenant-Governor in Council may revoke any appointment made under subsection (1) of Section 2 or subsection (1) of Section 3 and shall require any person whose

Revocation of appointment.

appointment is revoked to return to the Minister of Provincial Affairs the certificate issued under subsection (1) of Section 10.

Penalty.

(2) Any person who refuses or fails to return a certificate when required to do so under subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding one hundred dollars and costs.

This Act in addition to other Acts.

**13.** The provisions of this Act are in addition to and not in derogation of the provisions of any other Act.



## CHAPTER 52

### An Act Respecting Communicable Diseases

1. This Act may be cited as The Communicable Diseases Act. Short title.

2. In this Act Interpretation.

- (a) "communicable disease" means the diseases mentioned in the Schedule, and includes such other diseases as may from time to time be added to the Schedule by the Minister;
- (b) "Deputy Minister" means the Deputy Minister of Health;
- (c) "Minister" means the Minister of Health; and
- (d) "health officer" means a medical or other health officer duly authorized by the Minister to act as such.

#### NOTIFICATION OF COMMUNICABLE DISEASES.

3.—(1) Whenever any hotel-keeper, keeper of a boarding house or person in charge of any like premises where two or more people live, knows or is informed by a physician, or has reason to believe, that any person in his hotel, boarding house or premises, has any communicable disease dangerous to the public health, he shall immediately give notice to the nearest health officer. Notice of communicable diseases by boarding house keeper, etc.

(2) Such notice shall state the name of the person having or suspected of having any such disease, the name of the disease, if known, the name of the hotel-keeper, keeper of a boarding house or person giving notice, and shall, by street number or otherwise, sufficiently designate the house or room in which such person may be.

Notice of same  
by physician.

**4.**—(1) Whenever any physician knows, or has reason to believe, that any person is infected with any communicable disease he shall within twenty-four hours give notice thereof to the Deputy Minister of Health, or to the health officer in whose jurisdiction such person is, and to the hotel-keeper, keeper of a boarding house or tenant within whose house or rooms such person resides.

(2) The notice to the Deputy Minister of Health or to the health officer shall where possible state the name of the disease, the name, age and sex of such person, and the name of the physician giving the notice, and shall by street and number or otherwise sufficiently designate the house or room in which such person is.

Notice of same  
by others.

**5.**—(1) Whenever any person, being the manager or recognized official head in charge of any hospital or residential institution, or any teacher or instructor of pupils in any school or college or other seminary of learning knows or has reason to believe that any person in such hospital or institution, school, college or other seminary of learning, has any communicable disease, he shall immediately give notice thereof to the Deputy Minister of Health or to the health officer in whose district any such hospital or other institution, school, college or seminary of learning is situated.

(2) Such notice shall state the name of the person giving notice, the hospital or other institution in which such person is, or, in case such person at the time was attending a school, college or other seminary of learning, the name of such person, and, if not a resident therein, the street and number or other information sufficient to designate the house or premises in which such person resides.

#### INSPECTION.

Inspection of  
premises.

**6.** As soon as possible, after the receipt by a health officer of a notification of the existence of any case of communicable disease, the health officer may inspect or cause an inspection to be made of the premises where the disease is reported to exist, and it shall be the duty of the householder or manager thereof and of any person within such premises to give to the

health officer, or other person delegated by him to make an inspection, the fullest available information as to the person suspected of being infected, the source of the infection, if known, and generally such other information as the health officer or person making the inspection may require.

7. When complaint is made or a reasonable belief exists that any communicable disease exists in a house or other locality, which has not been reported to the health officer, such health officer shall cause such house or locality to be inspected, and, on discovering that such communicable disease exists, the health officer may, as he deems best, send the person or persons so infected to a hospital or may restrain such person or persons and others exposed within such house or locality from intercourse with other persons, and prohibit ingress and egress to or from such premises.

Inspection of premises not reported.

#### PREVENTION OF SPREAD OF DISEASE.

8. Where a case of communicable disease exists in the house of a dealer in foods ordinarily eaten uncooked, including milk and cream, or a person engaged in delivering such foods, such dealer or delivery man shall not continue the sale or the distribution of such foods until permitted to do so by the health officer of the locality in which he distributes or sells the same.

Disease in house of dealer in foods consumed uncooked.

9. Every dairyman or milk vendor supplying milk, cream or butter for use in any city, town or village shall at once report to the health officer any case of communicable disease in himself, his family or employees.

Vendors to report disease in self or family, etc.

10.—(1) In the event of a communicable disease occurring at any house occupied by the keeper of a dairy from which milk, cream or butter is supplied for use by the public, or at any premises within any such city, town or village where milk, cream or butter is kept, stored or prepared for sale, the health officer may, if he sees fit, prohibit the sale or delivery of any such articles from such premises until such time as he is satisfied that all necessary precautions for the public safety has been observed.

Health officer may prohibit sale.

(2) Any person, firm or corporation who shall, after having been so notified by the health officer to discontinue or interrupt

the sale of milk, cream or butter, neglect or refuse to obey or conform to such notice, shall be guilty of a violation of this Act, and be liable to a fine of fifty dollars for every day after such notification on which milk, cream or butter from his or their premises is sold or delivered in any such city, town or village, and in default of payment to imprisonment for thirty days for every such day on which such milk, cream or butter was so sold.

Diseased  
person not  
to milk cows.

**11.** No dairyman or milk vendor supplying milk, cream or butter shall allow any person suffering from any communicable disease, or having recently been in contact with any person so suffering, to milk cows or to handle vessels for containing milk, cream or butter or in any way take part or assist in the conduct of such trade, in so far as regards the production, distribution or storage of any such articles, until the danger therefrom of the communication of infection to milk, cream or butter, or their contamination, has ceased and a certificate to that effect obtained from the health officer.

Disease  
among cattle.

**12.** If at any time disease exists among the cattle in a dairy or cow shed, or other building or place, notice shall at once be given to the health officer, and the milk of a diseased cow therein shall not be mixed with other milk, and shall not under any circumstances be used or sold for human food; and it shall not be sold as food for swine or other animals, unless and until it has been boiled for at least thirty minutes.

Health  
officer's  
power to  
enter premises.

**13.** The health officer and any inspector or any person authorized by them or either of them, shall have the right and power to enter and have free access without let or hindrance to any building, structure or premises where any milk, cream or butter is stored or kept for sale, and shall have the right of access to all waggons, railroad cars or other vehicles of any kind used for the conveyance or delivery of milk, cream or butter, or to any building, structure or premises where he believes, or has reason to believe, milk, cream or butter is stored or kept for sale, and shall have the right to take samples from each vessel in which milk, cream or butter is kept or stored (such samples not to exceed one pint from each vessel) for the purpose of inspecting, testing or analysing the same.

## INVESTIGATIONS.

**14.**—(1) The Minister may in writing authorize and direct any fit and adequately qualified person to investigate the causes and circumstances of any outbreak of communicable disease or outbreak of unusual and unexplained mortality; and the person so authorized and directed shall, for the purposes of such investigation, have and exercise the powers ordinarily conferred upon a commissioner under the provisions of The Public Enquiries Act.

Investigations.

(2) If upon such investigation the Minister is of opinion that a remediable insanitary condition exists, the Minister may direct its immediate removal or abatement by the person responsible therefor, and if such person neglects or refuses after three days' notice in writing to remove or abate the same, may cause such removal or abatement to be made. Any person who, after written notice aforesaid, fails to remove or abate such insanitary condition to the satisfaction of the Minister of Health within the time limited, shall be guilty of an offence and liable to a fine of not more than one hundred dollars per day for every day he is in default.

Abatement of cause.

## EXAMINATION, HOSPITALIZATION AND TREATMENT OF PERSONS SUSPECTED OF BEING INFECTED.

**15.**—(1) Where a medical health officer has reasonable grounds for believing that a person is or may be infected with or has been exposed to a communicable disease the medical health officer may by order in writing direct that person to submit to an examination by the medical health officer or a physician designated by or satisfactory to the medical health officer and to procure and produce or send to the medical health officer within the time specified in the notice a report or certificate of the physician that the person is or is not infected with the disease.

Direction to person suffering from communicable disease to be examined.

(2) If as the result of a report or certificate produced or sent to a medical health officer under subsection (1) it appears that a person is infected with a communicable disease, the medical health officer may

Powers of medical health officer on receiving report.

- (a) with the approval of the Minister or the Deputy Minister of Health order in writing that the person infected be for the purpose of treatment removed to and detained in a hospital for the treatment of the disease with which that person is infected until such time as a physician attending at that hospital is satisfied that the infected person has received treatment and recovered sufficiently to be no longer a danger to the public and to be released from the hospital permanently or conditionally upon his returning for further examination or treatment or both; or
- (b) before, after or instead of making an order under paragraph (a) give to the infected person directions as to a course of treatment and conduct to be followed and require that person to produce from time to time evidence satisfactory to the medical health officer that he is following the directions given to him and if the infected person does not follow the directions given to him or does not produce the evidence required under this paragraph or if the evidence is not satisfactory to the medical health officer, the medical health officer may make an order under paragraph (a).

Medical health officer may order removal for examination or treatment.

(3) Where a medical health officer makes an order under subsection (1) or (2) he may deliver that order or a copy thereof to a constable who thereupon shall take into custody the person named in the order or in respect of whom the order is made and remove him to a place named in the order for examination or treatment.

Infected person not to leave hospital.

(4) A person who voluntarily enters a hospital for the treatment of a communicable disease or who has been removed to a hospital in accordance with an order under subsection (1) or (2) shall not leave the hospital before he has been released from the hospital by a physician attending at the hospital or by such other person as may have authority to release persons from the hospital.

No action for things done under this section.

(5) An action does not, in the absence of misfeasance or malfeasance, lie against any person in respect of anything done or

required to be done in carrying out or for the purpose of carrying out an order or examination given or made under this section.

(6) A person who

Offence.

(a) without reasonable excuse, the proof of which is upon him, does not comply with an order made under subsection (1) or paragraph (a) of subsection (2) or comply with paragraph (b) of subsection (2); or

(b) leaves a hospital contrary to subsection (4),

is guilty of an offence and liable on summary conviction to a fine of not more than one hundred dollars.

#### EXPOSURE TO INFECTION.

**16.** Persons knowing themselves to be suffering from any communicable disease shall not enter or be in any public conveyance or mingle with the general public until they have seen a health officer or registered medical practitioner and been advised that it is not dangerous to the public so to enter or mingle.

Sick persons barred from entering public conveyance.

**17.—**(1) Where there is reason to suspect that any person who has a communicable disease is in or upon any railway car, ship or vessel, bus or other conveyance, the health officer or any person authorized by him may enter such conveyance and cause such person to be removed therefrom, using force, if necessary, and may detain the conveyance until it is properly disinfected, or the health officer may, if he thinks fit, remain or re-enter and remain on or in said conveyance, with any assistance he may require, for the purpose of disinfecting the same, and his authority shall continue in respect of such person and conveyance, notwithstanding the conveyance is taken into any other district other than his own.

Sick person's removal from public conveyance.

(2) The Deputy Minister of Health or any inspector, or any medical practitioner or other person authorized by the Deputy Minister shall have like authority.

Smallpox and communicable disease; discharge of patients.

## EPIDEMICS.

Disease outside province.

**18.** When any part of the province becomes exposed to any epidemic communicable disease existing outside the province, the Lieutenant-Governor in Council may declare that such disease exists in such places outside the province as aforesaid and prescribe such precautions as are deemed necessary to prevent the spread of the epidemic into this province from such place for a period to be named in such order.

Notice of disease arising in laundry.

**19.** The proprietor, manager or person in charge of any laundry shall give immediate notice to the health officer of any case of communicable disease appearing on the premises.

Clothing from infected premises.

**20.** No proprietor, manager or employer of any laundry shall knowingly receive or remove any clothing from any premises where there exists or has recently existed a case of communicable disease.

## IMMUNIZATION.

Immunization.

**21.** The Minister may from time to time if he is of opinion that an emergency condition in relation to any communicable disease exists or is to be apprehended, order, with the approval of the Lieutenant-Governor in Council, that immunization and re-immunization shall be compulsory within the limits of any specified part or parts of the province and the Minister may make all necessary regulations respecting the same including regulations respecting fees to be charged for immunization and thereupon Sections 22 to 29, both included, shall come into effect.

Penalty.

**22.** Any parent or guardian of any child required to be immunized, or any other person acting in contravention of, or failing to comply with the provisions of this Act, or any person wilfully obstructing an authorized person in carrying out the provisions of this Act, shall incur a penalty not exceeding two dollars for every offence, to be recoverable by the Minister of Health in a summary manner, and in default of payment thereof shall be liable to be imprisoned for a period not exceeding three days: Provided, that any person refusing to be immunized, or any parent or guardian refusing to submit a child for immuniza-

tion shall not be liable to any penalty if it shall be made to appear that there is satisfactory reason for such person or child not being immunized; but the burden of showing such cause shall rest with the party charged.

**23.** Upon and immediately after the effective immunization of any child the medical practitioner who performed the operation shall deliver to the father or mother or other person having care of the said child a certificate in a form to be prescribed by the Minister.

Certificate of immunization.

**24.** If any medical practitioner is of opinion that any person or child brought to him is not in a fit and proper state to be immunized, he shall deliver to such person or to the father or mother of such child or to the person having the care of the child a certificate to that effect, which certificate shall remain in force for two months after its delivery; and such person or the father or mother of such child or the person having the care of such child shall at the end of that period either have the certificate renewed or the immunization performed. The certificate referred to in this section shall be in a form to be prescribed by the Minister.

Child not fit for immunization.

**25.** Superintendents of Education, school boards and all educational authorities may at any time if so directed by the Minister order that no pupil shall be admitted to any school or other educational institution under their respective control unless such pupil hands to the teacher of the school he attends a certificate either of efficient immunization or of being insusceptible to immunization .

Right to refuse admission of child.

**26.** Whenever he deems it necessary, the Minister of Health or the health officer of any locality which is invaded by or threatened to be invaded by a communicable disease may require a certificate or other sufficient evidence of immunity from such communicable disease to be handed by every pupil attending any school, college, convent, university or other educational institution within such locality to the authorities of the institution which he attends; and every pupil who neglects or refuses to produce such certificate on demand shall be excluded from the institution during the whole time of his refusal or neglect.

Communicable disease; certificate of immunity.

Failure to  
exclude  
child not  
certificated.

**27.** Every person or corporation, having control over a school, college, convent, university or other educational institution, refusing or neglecting to exclude a pupil who does not furnish a certificate of immunization or insusceptibility to immunization when required so to do, as hereinbefore prescribed, shall be guilty of a violation of this Act and subject to the penalty hereinafter prescribed. Such certificate of unsusceptibility shall be in a form to be prescribed by the Minister.

Order for  
immunization.

**28.** In any proceeding under this Act, the Court may, with or without inflicting a penalty, make an order that immunization shall take place; and every subsequent refusal or neglect to obey such order shall be deemed a new offence.

Children,  
if under 16.

**29.** For the purpose of immunization, children in this Act shall mean persons under the age of sixteen years.

#### QUARANTINE.

Quarantine  
regulations.

**30.** The Minister of Health may in any case of actual or apprehended emergency, and subject to the approval of the Lieutenant-Governor in Council, make such general and particular quarantine orders and regulations applicable to vessels, goods, persons and things, being within this province or coming or being imported hither from abroad, as he may deem expedient for preventing the introduction or spread of communicable disease, and may affix penalties, forfeitures and punishments for the breach of any such general or particular orders or regulations, not exceeding the general penalties hereinafter provided.

Epidemics—  
powers of  
Minister.

**31.** Whenever the Minister is of opinion that any communicable disease is epidemic or threatens to become epidemic in any community, he shall have authority to issue an order, declaring such disease epidemic, and to order and enforce such measures in the way of quarantine, isolation of the sick, vaccination, disinfectant, closing of schools, public or private or prohibition of public gatherings as in his judgment may be necessary to stamp out the infection or contagion.

Epidemics—  
closing  
schools.

**32.** Where any communicable disease is unusually prevalent, or it is deemed by the Minister that in the absence of suitable preventive measures it may become epidemic, and a

health officer considers it necessary to order the closing of one or more schools and to prohibit public gatherings for the purpose of preventing or checking the spread of any disease, such health officer shall have power to so order for such period as he may specify, and the persons in charge of such schools shall not receive or admit any pupil into such schools, nor shall any public gatherings take place or be resumed, until permission for that purpose shall have been granted by the health officer.

#### REGULATIONS.

**33.**—(1) The Minister may make and publish regulations and orders for better achieving the general purposes of this Act, and in particular, without prejudice to the generality of the foregoing, for preventing the arising of communicable diseases, the spread of communicable diseases, the checking of epidemics, the securing of safe conditions in places to which the public resort and where they might be infected, and the securing of safe conditions in trades which might readily be the means of communication of infections, and may in and by such regulations prescribe penalties for the breach thereof, not exceeding the general penalty prescribed in Section 34 of this Act.

Regulations  
by Minister.

(2) Regulations made under this Act shall forthwith be published in *The Newfoundland Gazette* and laid before the Legislature within fifteen days after they are made, if the Legislature is then sitting, and, if not, then within fifteen days after the commencement of the next ensuing session thereof.

Regulations to  
be published  
and laid  
before the  
Legislature.

#### GENERAL PENALTY.

**34.** In any case not otherwise specifically provided for herein, any person wilfully committing a breach of the provisions of this Act shall be subject to a penalty not exceeding one hundred dollars, or in default of payment, to imprisonment for a period not exceeding thirty days, or to both fine and imprisonment.

General  
penalty.

## SCHEDULE.

“Communicable disease” means and includes

Anthrax

Botulism

Brucellosis (undulant fever)

Chickenpox

Cholera

Diarrhoea of the new-born (epidemic, including gastro-enteritis and colitis with onset at ages under four weeks)

Diphtheria

Dysentery; amoebic, bacillary and unspecified believed infectious

Encephalitis infections (arthropod-borne, i.e., western or eastern equine encephalitis)

Food-poisoning, viz., staphylococcus intoxications, salmonella infections or conditions appearing to be one of these where no laboratory specification is available

German measles

Hepatitis, infectious, (including serum hepatitis)

Leprosy

Malaria

Measles

Meningitis, viral or aseptic

(i) due to polio virus,

(ii) due to Cocksackie virus,

(iii) due to Echo virus,

(iv) other and unspecified

Meningococcal infections

Mumps

Ornithosis

Pemphigus neonatorum (impetigo of the newborn)

Pertussis (whooping cough)

Plague

Poliomyelitis, paralytic.



## CHAPTER 53

### An Act to Amend and Consolidate the Law Relating to the Organization and Administration of Community Councils

1. This Act may be cited as The Community Councils Act.

Short title.

2.—(1) In this Act

Interpretation.

- (a) “annual meeting” means the annual meeting of a community;
- (b) “area” means any area other than an area incorporated by special Act, a municipality or a local improvement district established or continuing and operating under The Local Government Act;
- (c) “business tax” means the business tax imposed by a council under this Act;
- (d) “chairman” means the chairman of a council and includes the vice-chairman;
- (e) “community” means a community organized or continuing and operating under this Act;
- (f) “community service fee” means the community service fee imposed by a council under this Act;
- (g) “constable” means a member of The Newfoundland Constabulary Force or a member of The Royal Canadian Mounted Police stationed in Newfoundland;
- (h) “council” means the council of a community;
- (i) “councillor” means a member of a council and includes the chairman, vice-chairman and the temporary chairman of a meeting;

- (j) "council regulations" means regulations made by a council under this Act;
- (k) "election" means an election held under this Act;
- (l) "meeting" means a meeting called under subsection (1) of Section 4;
- (m) "Minister" means the Minister of Municipal Affairs and Housing;
- (n) "municipality" means a Town or Rural District established or continuing and operating under The Local Government Act;
- (o) "regulations" means regulations made by the Lieutenant-Governor in Council under this Act;
- (p) "secretary" means the secretary of the council;
- (q) "special meeting" means a special meeting of a community;
- (r) "taxes" includes the business tax, community service fee, any tax imposed under Section 35, any tax imposed under Section 36 and the water rates, sewer rates and electricity rates imposed by a council under this Act;
- (s) "taxpayer" means a person whose name appears on a list prepared in accordance with Section 22;
- (t) "voter" means every person who
  - (i) is of the full age of nineteen years,
  - (ii) is a Canadian citizen or other British subject,
  - (iii) is on the day of election and has been for twelve months immediately preceding the day of election ordinarily resident in the community or for the purposes of action under Section 4, has been for twelve months immediately preceding the date of

such action ordinarily resident in the community,  
and

(iv) is not disqualified under any other provision of  
this Act.

(2) This Act and the regulations and council regulations shall be construed and interpreted so as to ensure that no provision thereof shall operate to trench upon or invade the proprietary rights of Her Majesty in right of Canada or the exclusive legislative jurisdiction of the Parliament of Canada. Idem.

**3.**—(1) This Act applies in respect of every community and every council of a community operating under The Community Councils Act, 1956, immediately before this Act came into force and each of them shall continue and operate for all purposes and in all respects as if each of them was organized under this Act. Application.

(2) The councillors of the communities referred to in subsection (1) shall hold office until the second Monday in December, 1963, at which time an election shall be held under this Act to elect their successors and if an election is not held at that time it shall be held within three months after that date on a date to be fixed by the council and thereafter elections shall be held in accordance with this Act. Present  
councillors  
to hold office  
until 1963.

(3) All debts, including taxes, rates and fees, due to the councils referred to in subsection (1) and all liabilities assumed by each of them under The Community Councils Act, 1956, shall be collected and discharged in accordance with this Act. Transfer of  
debts, etc.

**4.**—(1) Any five voters residing in an area may call a meeting of the voters residing in the area to decide whether the area will be organized as a community. Who may call  
a meeting.

(2) The voters referred to in subsection (1) shall call the meeting by posting in at least four public places in the area a notice in Form A, signed by the five voters, stating that a meeting of voters residing in the area will be held to decide whether the area will be organized as a community. Notice of  
meeting.

Contents of notice.

(3) The notice referred to in subsection (2) shall

- (a) indicate the area which it is proposed to organize as a community by a description of the boundaries or by the use of the name by which the area is generally or commonly known, or otherwise;
- (b) state clearly the time and place at which the meeting will be held.

Who may attend and vote at meeting.

**5.—(1)** Every voter in the area in which it is proposed to organize the community may attend and vote on every question put to the meeting.

Majority of voters in area may resolve to organize community.

(2) If a majority of the voters in the area proposed to be organized vote at the meeting in favour of organizing the area as a community, a resolution may be passed at that meeting in the form prescribed in Form B.

Chairman and secretary of meeting.

(3) A chairman and a secretary for the meeting shall be elected from the voters present at the meeting.

Contents of resolution.

(4) The resolution referred to in subsection (2) shall indicate the area proposed to be organized and shall specify which of the services and controls referred to in subsections (3) and (5) of Section 6 it is proposed to be organized to provide and maintain, or exercise, as the case may be, and the area may be the same as or less than that indicated in the notice posted under Section 4.

Size of council.

(5) The voters present at the meeting shall, after they have passed a resolution referred to in subsection (4), determine the number of persons who shall make up the council of the community and the number shall be not fewer than three and not more than five.

Election of first council.

(6) Subject to this Act, the voters present at the meeting shall elect a council for the proposed community.

Resolution and other information to be sent to Minister.

(7) When the resolution referred to in subsection (4) has been passed the chairman and the secretary of the meeting shall forthwith send a copy of the resolution to the Minister,

together with a statutory declaration in Form B, signed by the chairman and the secretary, and a list of the councillors elected by the meeting.

(8) Subject to subsection (5), the community may at a subsequent annual or special meeting increase or decrease the number of councillors.

Increase or decrease in number of councillors.

(9) If the number of councillors is increased in accordance with subsection (8) the community shall elect the additional members at the meeting when the number of councillors is increased and the election has the same effect as a bye-election held under this Act.

Election of additional member.

(10) If the number of councillors is decreased in accordance with subsection (8) the decrease is effective when the then councillors retire from office but if a councillor dies, resigns or vacates his office in accordance with this Act the decrease, in respect of the office of that councillor, is effective from the date of the death, resignation or vacation of office of the councillor.

Effective date for decrease.

**6.**—(1) The council is a body corporate.

Council body corporate.

(2) A community may provide and maintain such of the services mentioned in subsection (3) as it may be authorized in accordance with this Act to provide and maintain.

Community may provide services.

(3) The services referred to in subsection (2) are drainage, fire prevention and protection, garbage and waste disposal, water-supply, sewerage, local roads, sidewalks, playgrounds, street lighting, airstrips and the production and distribution of electricity.

Services.

(4) A community may exercise such of the controls mentioned in subsection (5) as it may be authorized in accordance with this Act to exercise.

Community may exercise controls.

(5) The controls referred to in subsection (4) are building, subdivision, zoning, traffic, animals at large and shop-closing.

Controls.

(6) Subject to this Act and the regulations, if any, and the council regulations, if any, the council has the general manage-

Duties and powers of council.

ment and control of the business and affairs of the community and its funds and property and for that purpose

- (a) it has all the powers and privileges, other than the power of taxation, of a municipality;
- (b) it may appoint a manager, secretary, treasurer and such other officers, agents or employees as it deems necessary and prescribe their duties, fix their remuneration, take security for the faithful performance of their duties and remove them and appoint others in their stead, and the council may appoint the same person to more than one office or employment.

Issue of  
certificate  
by Minister.

7.—(1) Subject to this Act, the Minister may issue a certificate

- (a) indicating the area of the community by a description of the boundaries or by the use of the name by which the area is generally and commonly known, or otherwise;
- (b) certifying it to be a community by the name of “The Community of .....”;
- (c) stating the services and controls which the community is authorized to provide and maintain or exercise under Section 6;
- (d) amending any order made under The Community Councils Act, chapter 67 of The Revised Statutes of Newfoundland, 1952, now repealed, or The Community Councils Act, 1956, now repealed, declaring an area to be a local government community

and the Minister may in the certificate or by a subsequent amendment to the certificate exclude from the area defined in the certificate or any part of the area the application of so much of this Act as he may deem advisable.

Extension  
or reduction  
of area of  
community.

(2) Subject to subsection (3), the Minister may by an amendment to a certificate issued under subsection (1) or by revoking

that certificate and issuing another certificate in substitution therefor

- (a) increase or decrease the services or controls which a community is authorized to provide and maintain or exercise under Section 6; or
- (b) extend or reduce the area of a community.

(3) When the area of a community is extended under subsection (2) this Act and all regulations, council regulations, controls and taxes made, exercised or imposed before the date of the extension of the area and still in force shall come into effect in the extended area on that date. Idem.

(4) A certificate or amendment thereto issued or made under subsection (1) or (2) shall be published in *The Newfoundland Gazette* and in a newspaper circulating in the community and has effect from the date of publication in *The Newfoundland Gazette* or such later date as may be prescribed in the certificate. Publication of certificate.

(5) From the date on which a certificate issued under subsection (1) has effect in accordance with subsection (4) the area indicated in the certificate is a community and the council shall operate in accordance with this Act. Date community comes into existence.

(6) All docks, quays, wharves, ships and structures touching the boundaries of the community and all ships attached either permanently or temporarily to any dock, quay, wharf, ship or structure shall be deemed to be within and to be part of the community. Docks, etc. deemed part of community.

(7) (a) In any case where the Minister deems it advisable, he may, by an order under his hand, disband any community, whether originally constituted by a certificate of the Minister or by an Order of the Lieutenant-Governor in Council under chapter 67 of The Revised Statutes of Newfoundland, 1952, now repealed, or Act No. 64 of 1952, now repealed; and the Minister may appoint a fit person to be liquidator to wind up the affairs of the Council. Disbandment of a community.

- (b) Where a Council is disbanded under this section, the affairs of the community shall be wound up in such manner as the Minister directs.
- (c) For the purposes of the winding up, the liquidator shall have the same powers to collect moneys due to the disbanded community at the time of disbandment as the community council had immediately before it was disbanded, and all moneys due the disbanded council shall remain due and payable to the liquidator.

Establishment of community in area served by local road board; certificate.

**8.—(1)** If the majority of the voters in an area served by a local road board elected under The Local Road Boards Act decide at a meeting called for that purpose that they wish the area to be established as a community under this Act and a resolution to that effect signed by the chairman and secretary of that meeting is forwarded to the Minister, the Minister may issue a certificate under Section 7, containing the particulars referred to in subsection (1) of that section, establishing the area as a community.

Publication and effective date of certificate.

(2) Section 7 applies in respect of a certificate issued in accordance with subsection (1) of this section.

Election of council.

(3) Subject to subsection (4) of this section, when a certificate is issued in accordance with subsection (1) of this section the council of the community shall be elected at a meeting held in accordance with Sections 4 and 5 and that meeting shall on a date to be fixed by the Minister be held within six months after the issue of the certificate.

Board to hold office until election of council.

(4) Where a certificate is issued under Section 7 in accordance with subsection (1) the local road board holding office in the area served by the board immediately before the certificate was issued shall serve as the council of the community until a council is elected under this Act, and when a council is elected under this Act the local road board thereupon ceases to exist and all of its property, rights, assets, duties, liabilities and obligations immediately pass to, are vested in, assumed by and imposed upon the council elected under this Act.

**9.**—(1) If the majority of the voters in a municipality indicate by a petition addressed to the Minister pursuant to The Local Government Act that they wish the area making up the municipality to be established as a community under this Act and the council of the municipality forwards the petition to the Minister, the Minister may with the consent of the Lieutenant-Governor in Council issue a certificate under Section 7, containing the particulars referred to in subsection (1) of that section, disestablishing the municipality and establishing as a community the area which made up the municipality.

Area making up a municipality may be established as a community.

(2) Section 7 applies in respect of a certificate issued in accordance with subsection (1) of this section.

Publication and effective date of certificate.

(3) Subject to subsection (4) of this section, when a certificate is issued in accordance with subsection (1) of this section the council of the community shall be elected at a meeting held in accordance with Sections 4 and 5 and that meeting shall on a date to be fixed by the Minister be held within six months after the issue of the certificate.

Election of council.

(4) Where a certificate is issued under Section 7 in accordance with subsection (1) the Town Council or Rural District Council holding office in the municipality immediately before the certificate was issued shall serve as the council of the community until a council is elected under this Act, and when a council is elected under this Act the Town Council or Rural District Council thereupon ceases to exist and all of its property, rights, assets, duties, liabilities and obligations immediately pass to, are vested in, assumed by and imposed upon the council elected under this Act and after paying all outstanding accounts or providing for all outstanding liabilities of the Town Council or Rural District Council, the council elected under this Act may use the remaining funds and other assets vested in it under this subsection in providing the services and exercising the controls which it is authorized to provide and exercise under this Act.

Town Council or Rural District Council to hold office until election of council.

**10.**—(1) Subject to this Act, a person is qualified to be elected as a councillor and to vote in an election of councillors who

Qualifications of councillors.

- (a) is a British subject of the full age of nineteen years;
- (b) has resided in the community for at least one year immediately preceding the date set for the election;
- (c) is liable for payment of the business tax or the community service fee;
- (d) is not indebted to the council for arrears of payment of the business tax or the community service fee in respect of any period prior to the end of the preceding financial year.

Exceptions. (2) Paragraphs (c) and (d) of subsection (1) do not apply to the election of the first council of a community but no person shall be elected as a councillor unless he is one of the persons referred to in subsection (1) of Section 33 or subsection (1) of Section 34.

Disqualification of councillors. (3) Except with the approval of the Minister, a person is not qualified to be elected as a councillor while he holds any office under the council to which any salary or remuneration payable out of the funds of the community is attached or while he is employed by the council in any capacity.

Qualification to serve as councillor. **11.**—(1) A person is not qualified to serve as a councillor and shall not take and subscribe the oath of office unless he is qualified to be elected as councillor and unless he has been elected or appointed in the manner prescribed by this Act.

Oath of office. (2) Each councillor shall before entering on the duties of his office take and subscribe the following oath of office:

“I, A.B., make oath and say that I am fully qualified as required by law for the office of councillor of the Community of ..... and that I will to the best of my ability faithfully perform the duties of councillor while I hold office. So help me God.”

Before whom taken after first election. (3) In the case of the first election of councillors by the community under this Act, the councillor who received the highest number of votes in the election shall administer the oath of

office to the other councillors elected in the election and one of those other councillors shall after he has taken the oath administer the oath of office to the first-mentioned councillor.

(4) In the case of any election other than the election referred to in subsection (3) the oath of office shall be taken and subscribed before the chairman or vice-chairman of the outgoing council or before the secretary.

Before whom taken after subsequent elections.

(5) The Secretary shall, after the oath has been taken in accordance with subsection (3) or (4), enter in the minute book of the council a certificate that each councillor has taken the oath.

Certificate of oath to be filed.

**12.**—(1) The first councillors elected under this Act shall hold office until the second election of councillors is held.

Term of first council.

(2) The second election of councillors shall take place on the second Monday in December next following after one year after the issue of the certificate under Section 7, and subsequent elections shall be held at the same time every two years after the second election and if the second or any subsequent election is not held at the time prescribed by this section it shall be held within three months after that time on a date to be fixed by the council.

Second and subsequent elections.

(3) Councillors hold office until their successors are elected and sworn into office.

Term of office of councillors.

(4) Councillors shall be elected at a special meeting of the community to be called for the purpose.

Election to be at special meetings.

(5) Councillors are eligible for re-election.

Councillors eligible for re-election.

(6) Subject to subsection (2) of Section 3 and to subsection (2) of this section, if an election is not held when required by this Act or if an election is called for and no councillors are elected the Minister may appoint a council and the councillors so appointed by him shall hold office as if they had been elected under this Act.

Appointment by Minister.

Bye-election.

**13.** Subject to Section 14, when a vacancy occurs in the office of a councillor at any time prior to six months before the expiration of the term of office of the council the remaining councillors shall call a special meeting of the community to conduct a bye-election of a councillor who shall hold office for the unexpired term of the councillor whom he replaces.

Filling vacancies immediately after election.

**14.—(1)** Where as the result of an election or bye-election the number of councillors is less than the number determined under subsection (5) or (8) of Section 5, the Minister may appoint as many councillors as may be necessary to bring the number of councillors up to that number and a councillor appointed under this subsection holds office until the expiration of the term of office for which councillors were to be elected or were elected in the election.

Appointment of councillors where no quorum.

(2) Subject to subsection (1) of this section and notwithstanding Section 13, where the number of councillors holding office in a council is less than that required by this Act as a quorum for the purpose of a meeting of the council, the Minister may appoint a number of councillors sufficient with those already in office to constitute a quorum and any councillor appointed under this subsection holds office until the expiration of the term of office of the councillors who held office in the council immediately before his appointment.

Vacation of office by councillors.

**15.—(1)** The office of a councillor becomes vacant

- (a) if he resigns, from the date, if any, specified in his resignation or, if no date is specified therein, from the date on which he files his resignation in writing with the chairman or the council or, where he resigns at a meeting of the council or of the community, from the time of his resignation;
- (b) from the date on which a receiving order is made against him under the *Bankruptcy Act* (Canada) or on which he files an assignment or makes a proposal under that Act; or
- (c) if the council declares it vacant in accordance with subsection (2), from the date of the declaration.

(2) The council shall by resolution declare vacant the office of a councillor if he

Declaration of vacancy.

- (a) ceases to reside in the community;
- (b) is absent from the community for more than one year at any time;
- (c) ceases to be liable, or after his election fails to become liable for payment of the business tax or the community service fee;
- (d) becomes indebted to the council for arrears of the business tax or the community service fee;
- (e) without leave of the council neglects to be sworn into office within two months after his election or absents himself from meetings of the council for three consecutive meetings and, for the purposes of this paragraph, failure to be present at the place of meeting at the appointed time after due notice of the meeting has been given constitutes absence from the meeting even though no meeting was held because of lack of a quorum; or
- (f) without the approval of the Minister accepts any office under the council to which any salary or remuneration payable out of the funds of the community is attached or is employed by the council in any capacity.

(3) A councillor in respect of whom a resolution is made under subsection (2) may not vote on that resolution.

Councillor concerned may not vote.

(4) A councillor who sits or acts after his office becomes vacant is guilty of an offence and liable on summary conviction to a fine of not more than twenty dollars and in default of payment to imprisonment for a term not exceeding ten days for each time he sits or acts contrary to this section.

Offence.

**16.**—(1) At the first meeting after their election the councillors shall appoint one of their members to be chairman and another to be vice-chairman.

Appointment of chairman and vice-chairman.

- Filling vacancy. (2) If the office of chairman or vice-chairman becomes vacant at any time the councillors shall appoint one of their members to the vacant office.
- Chairman to preside at meetings. (3) The chairman and in his absence the vice-chairman shall preside at all meetings of the council and of the community and his decision on all points of order is final.
- Temporary chairman. (4) If both the chairman and vice-chairman are absent from a meeting of the council the other councillors present, if they constitute a quorum, shall appoint one of themselves to be temporary chairman and he has and may exercise the powers and shall carry out the duties of the chairman at the meeting.
- Idem. (5) If both the chairman and vice-chairman are absent from a meeting of the community
- (a) if the council is made up of three councillors the remaining councillor shall be the temporary chairman;
  - (b) if the council is made up of more than three councillors the other councillors present at the meeting shall appoint one of themselves to be temporary chairman; or
  - (c) if no councillor is present the meeting shall be adjourned for one week and if no councillor is present at the adjourned meeting the meeting shall appoint one of the taxpayers present to be temporary chairman
- and a temporary chairman acting under this subsection has and may exercise the powers and shall carry out the duties of the chairman at the meeting.
- Term of office. (6) The chairman and vice-chairman shall serve for one year but they are eligible for re-appointment.
- Council to regulate its proceedings. **17.—(1)** Subject to this section, the council may regulate its own proceedings.
- Quorum. (2) A majority of the number of councillors as determined pursuant to subsection (5) or (8) of Section 5 constitutes a quorum for the purpose of a meeting of the council.

- (3) Every disputed question other than a point of order shall be decided by a majority of the votes of the councillors present at a meeting of the council. Voting.
- (4) When there is an equality of votes inclusive of his own vote, the person presiding at a meeting of the council has a second or casting vote. Casting vote.
- 18.** Every meeting of the council is open to the public unless it is held as a privileged meeting or declared by vote of the councillors present at the meeting to be a privileged meeting and in those cases all members of the public present shall retire. Meetings to be public ordinarily.
- 19.** The council shall meet at least once every three months for the dispatch of general business. Meetings to be every three months.
- 20.** Special meetings of the council may be called at such times as the chairman deems necessary or on the written request of two councillors. Special meetings.
- 21.**—(1) Subject to the approval of the Minister, the council may make regulations, not inconsistent with this Act or regulations made under Section 40, for the calling of meetings of the community, the procedure at those meetings, and generally for all matters incident to or necessary for carrying out the objects and powers of the community. Council may make regulations.
- (2) Council regulations shall be signed by the Minister stating that the approval required under this Act was given and the date on which the approval was given. Minister to sign council regulations.
- (3) After the Minister approves them, council regulations shall be published either by insertion in a newspaper circulating in the community or by poster or as the council may direct and shall come into force when they are published or on such later date as may be prescribed in them. Publication of council regulations and date of coming into force.
- (4) A copy of council regulations purporting to be signed by the chairman as a true copy shall be received in evidence in all courts without proof of signature. Council regulations as evidence.

Taxpayers' list.

**22.** At least two weeks prior to every annual meeting the council shall cause to be prepared a list of all persons liable to payment of the business tax or the community service fee.

Report and statement of accounts to annual meeting.

**23.—(1)** The council shall submit to each annual meeting a report of the activities of the community since the last annual meeting and a statement of the accounts of the community for the preceding financial year.

Copy of report and statement to Minister.

(2) The chairman shall send to the Minister on or before the fifteenth day of April in each year a copy of the report and of the statement required to be submitted to the annual meeting by subsection (1).

Exception.

(3) This section does not apply to the first annual meeting held in accordance with Section 25.

Appointment of auditors.

**24.—(1)** The Minister shall appoint one or more persons to audit the accounts of the community.

Powers of auditors.

(2) An auditor appointed under this section may at any time call for and the council shall supply him with all books and vouchers of the council which he deems necessary to enable him properly to audit the accounts of the community.

Interim examination of accounts and report thereon.

(3) Whenever an auditor makes an interim examination of the accounts of the community during the course of a financial year he shall submit a report thereon to the chairman and to the Minister.

Auditor's report on statement of accounts.

(4) The auditor shall examine and report on the statement of the accounts of the community required to be made under subsection (1) of Section 23 and in the report shall direct attention to

- (a) any expenditure during the year to which the accounts relate in excess of the budget for that year approved at the annual meeting in accordance with Section 30;
- (b) the position with regard to arrears of revenue;
- (c) the manner in which the accounts have been kept;

- (d) the adequacy of the safeguards against fraud; and
- (e) any other matters connected with the accounts which the auditor considers of sufficient interest or importance to mention.

(5) The council shall submit a copy of the auditor's report to the first special or annual meeting held after the report has been received.

Submission  
of auditor's  
report.

**25.—(1)** Except in the first year, the annual meeting of the community shall be held at a time, not later than the thirty-first day of March, and place to be fixed by the council or at such later time as may be approved by the Minister.

Annual  
meeting.

(2) The annual meeting shall

Business of  
the meeting.

- (a) pass upon the accounts of the last financial year;
- (b) pass upon the budget for the current financial year;
- (c) by resolution, prescribe the amount to be raised by the imposition, where applicable, of the business tax, the community service fee, any tax under Section 35 and any tax under Section 36 and by borrowing during the current financial year; and
- (d) transact such other business as may be required by the council regulations, if any, or as the council may deem necessary.

(3) The first annual meeting shall be held within sixty days after the election of the first council and shall

First annual  
meeting.

- (a) pass upon the budget for the current financial year;
- (b) by resolution, prescribe the amount to be raised by the imposition, where applicable, of the business tax, the community service fee, any tax under Section 35 and any tax under Section 36 and by borrowing during the current financial year; and
- (c) transact such other business as may be required by the council regulations, if any, or as the council may deem necessary.

Special meetings.

**26.** Special meetings of the community may be called at any time by the council and shall be called by the council within ten days upon the written request of twenty-five per centum or more of the taxpayers or upon the written request of the Minister.

Notice of meetings.

**27.**—(1) Notice of every annual and special meeting shall be given by the council by posting in four public places in the community at least one week before the date set for the meeting a notice stating the time and place of the meeting.

Notice to state business of meeting.

(2) The notice calling a special meeting shall state clearly the business which is to be considered by the meeting and no business shall be considered by the meeting other than that stated in the notice.

Who may vote.

**28.**—(1) Every taxpayer and the wife or husband of the taxpayer may attend a meeting of the community and, if the taxpayer is not indebted to the council for arrears of the business tax or community service fee, may vote once on every question put to the meeting.

Idem.

(2) If a taxpayer is disqualified from voting because he is indebted to the council for arrears of the business tax or the community service fee the husband or wife of that taxpayer may not vote unless that husband or wife is liable for the business tax or the community service fee and is not in arrears.

Idem.

(3) Where both a husband and his wife are liable for the business tax or the community service fee the payment of that tax or fee by one of them does not qualify the other to vote.

Quorum.

(4) Ten per centum of the persons entitled to vote under subsection (1) constitute a quorum at every annual and special meeting of the community, and if a quorum is not present the meeting shall be adjourned to a later date to be fixed by the council and notice of the later date shall be given in accordance with Section 27.

Community may authorize council to provide services or exercise controls.

**29.**—(1) Notwithstanding any other provision of this Act, at an annual meeting or at a special meeting called for the purpose, a resolution may be passed authorizing the council to pro-

vide and maintain any of the services or exercise any of the controls mentioned in subsections (3) and (5) of Section 6 which it is not already authorized to provide and maintain or to exercise, or authorize the council to abandon any of the services or the exercise of any of the controls it is already authorized to provide and maintain or to exercise, but any such resolution shall not come into effect until approved by the Minister and until notice of the approval has been published in such manner as the Minister directs.

(2) The Minister shall make such investigation as he deems necessary into the advisability of granting any alteration in the powers of the council.

Minister to investigate.

**30.**—(1) The Council shall in each year prepare a budget of the amounts required for the expenses of the community for the current financial year and submit it to the annual meeting for consideration.

Annual budget.

(2) The budget shall show the rate of the business tax, the community service fee, the tax under Section 35 and taxes under Section 36 which it is intended to impose to raise the amount of money required to meet the estimated expenses.

What budget must show.

(3) The annual meeting shall by resolution authorize the expenses of which the meeting approves and such, or all, of the taxes referred to in subsection (2) which may be imposed to meet them.

Resolution authorizing expenditure and taxes.

(4) Copies of the resolution approving the budget and authorizing the taxes shall be posted in at least four public places in the community within seven days after the annual meeting.

Publication of resolution.

**31.** Within seven days after the annual meeting the council shall send to the Minister

Report to Minister.

(a) a copy of the budget; and

(b) a list of the taxes approved and authorized under Section 30.

Borrowing for capital expenditure.

**32.**—(1) At an annual or special meeting the community may by resolution authorize the council to borrow for capital expenditure an amount not to exceed the amount stated in the resolution.

Copy of resolution to be sent to Minister.

(2) A certified copy of every resolution passed under subsection (1) shall be transmitted to the Minister and a council shall not borrow any money for capital expenditure except as authorized by the Minister in writing.

Borrowing for expenditure on current account.

(3) The council may in any year borrow for current expenses an amount not to exceed fifty per centum of the amount authorized to be raised by the imposition of the business tax, the community service fee, the tax under Section 35 and taxes under Section 36 for the year, but the total amount borrowed under this subsection shall not at any time exceed fifty per centum of the amount authorized to be raised by the imposition of the business tax, the community service fee, the tax under Section 35 and taxes under Section 36 for the current year.

Business tax.

**33.**—(1) Subject to the approval of the Minister and to Section 30, the council may impose upon, sue for and collect from every person and company carrying on within the community any business, trade or profession an annual tax, to be known as a business tax, of not less than five dollars.

Fixing of tax.

(2) When the tax has been imposed under subsection (1) the Council shall fix the tax as a percentage of the value or magnitude, as estimated by the Council, of business done by the operator, and the Council may vary the percentage in its application to different kinds or classes of business, trades or professions, and, subject to subsection (3), the estimate by the Council of the value or magnitude of the business done is final; and the amount of the business tax fixed under this subsection shall not be more than five hundred dollars.

How floor space ascertained.

(3) Any operator deeming himself aggrieved by the decision of the Council fixing the amount of the business tax under subsection (2) may request a hearing and reconsideration by the Council, and upon the reconsideration the Council may require him to make and furnish a statutory declaration as to the amount or value of business done by him and may require the production of his books for examination, and shall in accordance with

the declaration and the books confirm or vary the amount of the tax and that decision is final.

(4) The business tax shall be paid on such date in each year as the council directs.

Date tax payable.

**34.—**(1) Subject to Section 30, the council may impose, sue for and collect a community service fee of not less than five and not more than twenty dollars, to be paid by

Community service fee.

(a) all male persons who are not less than nineteen years of age and who reside or are employed in the community for a period of not less than three months in the aggregate during the financial year;

By whom to be paid.

(b) all non-resident persons, companies or firms who own real property within the community of a value of one hundred dollars or more; and

(c) all female persons who are not less than nineteen years of age and who reside or are employed in the community for a period of not less than three months in the aggregate during the financial year and who have an income from any source whatsoever of six hundred dollars or more a year.

(2) The Council may vary within the stated limits of five to twenty dollars the amount of the fee in respect of persons coming within paragraph (a) or (c) of subsection (1) of this section.

Limits of fee.

(3) Any person coming within paragraph (a) or (c) who though temporarily resident or employed in a community is liable for the payment in the city or municipality or community in which he or she permanently resides of real property tax or any tax on individuals irrespective of their property or business in the nature of a poll tax or community service tax, however named, shall not be liable for the community service fee under this Act in the community in which he or she temporarily resides or is temporarily employed.

Certain temporary residents exempt.

Employers to deliver lists of employees.

(4) Every employer within a community shall on demand of the council deliver to the council within two weeks a list of the names of those employed by him, and their usual places of residence and the dates on which their respective employments commenced.

Payment in kind.

(5) The council may accept payment of the community service fee by services or materials of the equal value when in the opinion of the council the taxpayer is unable to pay in cash or would be put to grave hardship by so doing.

Time of payment.

(6) The community service fee shall be paid on such date in each year as the council shall direct.

Deduction of community service fee by employer.

(7) Where any person has been employed in a community for a period of not less than three months in any financial year, the employer of such person shall deduct from the wages of such person a sum equal to the community service fee to which such person is liable, and shall forward all moneys so collected to the council, and, for the purposes of this subsection, the employer shall be deemed to be an agent of the council, but an employee exempt from the fee may obtain a certificate to that effect from the chairman, and in such case the employer shall not deduct the said sum.

Tax on coal, fuel oil and propane gas.

**35.—**(1) Subject to Section 30 and to subsection (3) of this Section, the council may impose, sue for and collect a tax of not more than

- (a) one cent on every ten pounds of coal or fraction thereof;
- (b) two cents on every gallon of fuel oil or fraction thereof; and
- (c) two cents on every pound of propane gas or fraction thereof

upon every person referred to in subsection (2).

(2) Subject to subsection (3), the tax referred to in subsection (1) may be imposed on

Persons on whom tax may be imposed.

(a) every person who

(i) purchases at a retail sale in the community, or

(ii) brings into or receives in the community,

coal, fuel oil or propane gas

(iii) for his own consumption or for the consumption of other persons at his expense in, or

(iv) on behalf of or as the agent for a principal who desires to acquire the coal, fuel oil or propane gas for consumption by the principal or by other persons at the expense of the principal within

the community; and

(b) every person who purchases at a retail sale in the community coal, fuel oil or propane gas

(i) for his own consumption or for the consumption of other persons at his expense, or

(ii) on behalf of or as the agent for a principal who desires to acquire the coal, fuel oil or propane gas for the consumption by the principal or by other persons at the expense of that principal

on any ship whether within or outside of the community.

(3) The tax referred to in subsection (1) may not be imposed on any person who purchases coal, fuel oil or propane gas in a community for consumption on any ship engaged in the coastal shipping trade of the province or on any fishing vessel, trawler or craft the catch of which is processed in Newfoundland.

Exemptions.

Tax payable on coal, fuel oil or propane gas purchased outside community for consumption therein.

(4) Every person who purchases coal, fuel oil or propane gas at a retail sale outside the community and, for consumption in the community or on a ship other than one referred to in subsection (3), brings or causes it to be brought into or receives delivery of it in the community shall, at the time when he brings or causes it to be brought into or when he receives delivery of it in the community, deliver to the council the invoice and all other information required by the council in respect of the coal, fuel oil or propane gas, and at the same time, pay to the council the tax imposed under subsections (1) and (2).

Seller is agent of council.

(5) Every person or his representative who sells at a retail sale in the community coal, fuel oil or propane gas to a person for consumption in the community or on a ship other than one referred to in subsection (3) is deemed to be an agent of the council, in this section called "the agent", for the purpose of this section and as such shall collect from that person at the time of the sale the tax imposed under subsections (1) and (2), and every purchaser at a retail sale shall pay the tax to the agent at the time of the sale, whether or not the tax is demanded by the agent.

Agent to file statement.

(6) Every agent shall file with the council on or before the twentieth day of each month a statement or return showing the total number of tons of coal, gallons of fuel oil, or pounds of propane gas sold by the agent at retail sales in the community, together with the name and address of each purchaser thereat, during the preceding calendar month, whether or not he has received payments for the coal, fuel oil or propane gas, and the number of tons of coal, gallons of fuel oil or pounds of propane gas used by the agent, and the statement shall be verified by affidavit and shall be in such form as the council prescribes, and the statement shall show also the quantity of coal, fuel oil and propane gas sold for consumption on ships, trawlers, vessels or craft referred to in subsection (3).

Date of remittance of tax to council.

(7) On or before the twentieth day of each month, every agent shall remit to the council, in respect of every ton of coal, gallon of fuel oil, or pound of propane gas sold to purchasers at retail sales in the community during the preceding calendar month, an amount equal to the tax thereon imposed by this section, but no tax is payable in respect of purchases at retail sales for con-

sumption on a ship, vessel, trawler or craft referred to in subsection (3).

(8) Every person whose place of business is outside a community and who in person or by his representative or servant delivers coal, fuel oil or propane gas in the community to any persons for consumption therein or on a ship other than one referred to in subsection (3) is deemed to be an agent of the council for the purpose of this section, and subsections (5), (6) and (7) apply *mutatis mutandis* to such agent with respect to coal, fuel oil or propane gas delivered to such persons.

Person from outside community delivering coal, etc., in community is agent of council.

(9) Every person who has paid the tax imposed under subsections (1) and (2) to an agent referred to in subsection (8) shall deliver to the council the invoice and information required under subsection (4), but if he shows that he has paid the tax to that agent, he is not liable for payment under subsection (4).

Liability of consumer to whom coal, etc., delivered.

(10) All moneys collected under this section by an agent referred to in subsection (5) or subsection (8) are the property of the council and shall not be diverted or used for any purpose by the agent, and in addition to any penalty imposed on the agent under this section, the council may proceed against him in any court of competent jurisdiction for an accounting and payment of all taxes which he has collected or should have collected under this section.

Tax is property of council.

(11) Every person who contravenes this section or fails to comply with any requirements or obligations imposed on him by or under it is guilty of an offence and liable on summary conviction to a fine of not less than two hundred dollars and not exceeding four hundred dollars and in default of payment to imprisonment for a term not less than two months and not exceeding six months, or to both such fine and imprisonment.

Penalty.

(12) The council may appoint such inspectors, officers and other persons as it deems necessary for the proper carrying out of the provisions of this section, and every person having coal, fuel oil or propane gas in his possession or keeping coal, fuel oil or propane gas for sale shall permit the inspectors, officers or other persons to enter upon his premises and shall disclose to and make available for examination by the inspectors, officers or

Inspectors.

other persons all books, invoices, letters and documents of every kind relating to his sales or purchases of coal, fuel oil or propane gas.

**Regulations.** (13) Subject to the approval of the Minister, the council may make such regulations as it deems necessary for carrying into effect the provisions and purposes of this section.

**Definition.** (14) For the purposes of this section,

- (a) "coal" means anthracite coal and bituminous coal;
- (b) "consumption" includes use;
- (c) "fuel oil" means furnace oil, stove oil, bunker fuel oil and diesel fuel oil;
- (d) "gallon" means a gallon measured according to the *Weights and Measures Act* (Canada) and regulations made thereunder;
- (e) "person" includes a partnership, association or corporation; and
- (f) "retail sale" means a sale of coal, fuel oil or propane gas to a person where the coal, fuel oil or propane gas is not purchased by that person for resale, but
  - (i) for his own consumption or use or for the consumption or use of other persons at the expense of the purchaser, or
  - (ii) on behalf of or as the agent for a principal who desires to acquire the coal, fuel oil or propane gas for consumption or use by the principal or by other persons at the expense of that principal,

and for the purposes of this paragraph "sale" includes

- (iii) a sale for cash or on credit,
- (iv) a sale where the price is payable by instalments,

- (v) an exchange,
- (vi) a barter,
- (vii) a sale under which possession of the coal, fuel oil or propane gas is or is to be delivered to a buyer and the title to the property is to be vested in him at a subsequent time on payment of whole or part of the price or on the performance of any other condition,
- (viii) any other contract whatsoever whereby at a price or other consideration a person transfers to another, whether conditionally or otherwise, title to any coal, fuel oil, or propane gas.

**36.—**(1) The council may, subject to Section 30, impose, sue **Other taxes.**  
for and collect

- (a) a tax of not less than five dollars nor more than ten dollars on every motor vehicle ordinarily operated for hire or reward as a bus, passenger car or truck from within the limits of the community or for the conveyance of passengers or goods from one point to another within the limits of the community, and the council may fix different rates in respect of buses, passenger cars and trucks;
- (b) a tax of not less than two dollars and fifty cents nor more than five dollars on every motor vehicle, not being one to which paragraph (a) or (c) of this subsection applies, ordinarily operated from within the limits of the community;
- (c) a tax not exceeding one dollar payable by the owner of each motor cycle operated from within the limits of the community; and
- (d) a tax of not more than one dollar payable by the owner of each bicycle operated from within the limits of the community.

When paid. (2) The taxes referred to in subsection (1) are payable once in each year at the time set by the council.

Identification plates to be affixed to vehicles on which taxes paid. (3) The council may authorize the issue of an identification plate or adhesive sticker to be affixed to each vehicle referred to in the paragraphs of subsection (1), when the taxes referred to in those paragraphs have been paid, and when it has been so authorized, the council shall issue the plate or sticker to the owner and the owner shall affix it and keep it affixed to a conspicuous place on the vehicle in respect of which the tax has been paid.

Offence. (4) Every person who

- (a) being the owner of a vehicle in respect of which a tax has been paid under one of the paragraphs of subsection (1), fails to affix or keep affixed to it, in accordance with subsection (3), an identification plate or adhesive sticker pursuant to that subsection; or
- (b) removes, damages, defaces or otherwise interferes with an identification plate or adhesive sticker which has been affixed in accordance with subsection (3)

is guilty of an offence and liable on summary conviction to a fine not exceeding one hundred dollars and in default of payment to imprisonment for a period not exceeding ninety days, and the provisions of subsection (2) of Section 44 apply, *mutatis mutandis*, to this subsection.

Regulations for licensing and keeping dogs. **37.**—(1) Subject to the approval of the Minister and to subsection (2), the council may make regulations for

- (a) prohibiting, restricting or regulating the running at large or keeping of dogs within the community; and

- (b) licensing dogs and charging a fee therefor.

Repeal of regulatory powers respecting dogs. (2) The Lieutenant-Governor in Council may by proclamation repeal subsection (1) or either paragraph (a) or paragraph (b) of that subsection.

- (3) Any proclamation made under subsection (2) shall be published in *The Newfoundland Gazette* and shall have effect from the date of publication or from such later date as may be stated in the proclamation. Publication of proclamation under subsection (2).
- (4) Regulations made under subsection (1) shall be signed by the Minister stating that the approval required under this Act was given and the date on which the approval was given. Approval.
- (5) Regulations made under subsection (1) shall be made public by poster erected in such places as the council may direct and shall not have effect until they are so posted. Publication.
- (6) The council may sue for and collect any fee charged pursuant to regulations made under subsection (1). Collection of fees.
- 38.** The council of any community authorized under this Act to operate a water or sewer system may impose upon and sue for and collect from all persons owning property served by the community water or sewer system, whether or not the property is connected to the water or sewer system, such water or sewer rates as may be approved by the Minister. Water and sewer rates.
- 39.—**(1) Subject to existing rights, the Lieutenant-Governor in Council may grant to the council of a community authorized under this Act to produce and distribute electricity the exclusive right to establish, own and operate a plant and transmission lines for the production and distribution of electricity for use within or outside the community. Electricity franchise.
- (2) A council referred to in subsection (1) may impose upon and sue for and collect from all persons occupying property to which electricity is distributed by the council such electricity rates as may be approved by the Minister. Electricity rates.
- 40.—**(1) Whenever it is made to appear to the council that any exemption from payment of the business tax or community service fee or any remission of that tax or fee or of the interest thereon, in whole or in part, is desirable, the council may, upon the unanimous vote of the members of the council present at a meeting, represent to the Minister that the exemption or remission should be granted and, if the Minister approves, the Prohibition of exemption or remission from certain taxes save with approval of the Minister.

exemption or remission may be granted subject to such conditions as the Minister imposes.

- Idem.** (2) Save as provided in this section or otherwise specially provided in this Act, the council shall not grant any exemption or remission from taxes to any person, and no contract, agreement or stipulation with any person for an exemption or remission from taxes is valid.
- Community fund.** **41.**—(1) All moneys collected or received by the council from taxes, levies, fees, loans, gifts or grants shall constitute a fund which shall be called “The Community of..... Fund”, and the fund, hereinafter called the community fund, shall be under the direction and control of the council subject to this Act.
- Bank account.** (2) All moneys received by the council for the community fund shall be lodged with a bank in an account entitled in the name of the fund and all orders or cheques withdrawing moneys from the account shall be signed by the chairman and countersigned by such other officer of the council as the council appoints for the purpose.
- Financial year.** **42.** The financial year of the council shall be from the first day of January to the thirty-first day of December next following, except in the first year when it shall be from the date of the first annual meeting until the thirty-first day of December next following.
- Regulations.** **43.** The Lieutenant-Governor in Council may make such regulations as he deems advisable for the purpose of carrying into effect the provisions of this Act according to their true intent and meaning and of supplying any deficiency therein.
- General penalty.** **44.**—(1) Every person who contravenes or fails to comply with any of the provisions of this Act, or any requirements or obligations imposed on him by virtue of this Act, or any order or regulation made under this Act, or any council regulations, or who interferes with or obstructs any person in the discharge of his duties under this Act or under any such order or regulation, or who tears down, removes or damages any council regulations, order or notice posted or published by the council, is

guilty of an offence and liable on summary conviction, where no penalty is otherwise provided, to a fine not exceeding one hundred dollars and in default of payment to imprisonment for a period not exceeding ninety days.

(2) The conviction of any person for failing to comply with any requirements or obligations referred to in subsection (1) does not operate as a bar to further prosecution for the continued failure on the part of that person so to comply.

Continuing offences.

**45.** Prosecutions for breaches of any of the provisions of this Act or of any regulation or order made under it or of any council regulation shall be taken in the name of the council having the control and management of the community in which the offence was committed or in the name of any constable and all fines and penalties recovered thereunder shall be forwarded by the court imposing them to the Department of Justice for payment to the credit of the community fund to which they relate.

Prosecutions to be taken by council and fines and penalties recovered to be paid to credit of community fund.

**46.** In all proceedings in any court of summary jurisdiction to which the community or the council is a party the community or the council may be represented by the chairman or by such councillor or officer or servant of the council as the council may designate.

Representation of community in court.

**47.** A community may be established as a municipality under and in accordance with Sections 6 and 7 of The Local Government Act.

Community established as municipality.

FORM A

(Section 4(2))

THE COMMUNITY COUNCILS ACT

PUBLIC NOTICE

The undersigned persons, being voters residing in the area known as *(or described as follows)* ....., hereby call a meeting of all voters residing in the area to decide whether the area will be organized as a community under the provisions of The Community Councils Act for the purpose of providing and maintaining or exercising such of the following services and controls as the meeting may decide: drainage, fire prevention and protection, garbage and waste disposal, water supply, sewerage, local roads, sidewalks, playgrounds, street lighting, airstrips and the production and distribution of electricity, building, subdivision, zoning, traffic, animals at large and shop-closing.

This meeting will be held at ....., on the ..... day of ....., 19....., at the hour of ..... o'clock in the ..... noon.

The proposed boundaries of the community are as follows:

.....  
 .....  
 .....  
 .....

Dated the ..... day of ..... 19.....

FORM B

(Section 5(2) and (7))

THE COMMUNITY COUNCILS ACT

RESOLUTION

The voters of .....  
assembled in meeting under the provisions of The Community  
Councils Act, 1962, hereby resolve that in the opinion of this  
meeting it is desirable to organize a community to serve the  
area above described and that such community be authorized  
to provide and maintain or exercise the following services and  
controls:

STATUTORY DECLARATION

We, ..... and .....  
of ....., do solemnly declare:

1. That we were chairman and secretary respectively of  
a meeting of voters of the above described area held at  
..... on the ..... day of ....., 19.....,  
at the hour of ..... o'clock in the ..... noon under  
the provisions of The Community Councils Act.

2. That the foregoing resolution was voted on at the said  
meeting and that the result of the poll taken on the resolution  
was:

- Number of voters present .....
- Number of voters yes .....
- Number of votes nay .....

3. That the following persons were elected to serve as  
councillors of the community:  
.....  
.....  
.....

4. That in our opinion all persons who voted on the resolution and in the election were qualified to vote thereon and therein.

And we make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath.

Declared before me at .....  
this ..... day of.....

.....  
(Justice of the Peace,  
Commissioner of the  
Supreme Court,  
Commissioner for Oaths  
or Notary Public.)

.....  
Chairman

.....  
Secretary



## CHAPTER 54

### An Act Respecting Companies

#### PRELIMINARY.

1. This Act may be cited as The Companies Act. Short title.
  
2. In the construction of this Act and of the Schedules thereto, and of any rules that may be made thereunder, unless there is anything in the subject or context repugnant thereto, the several words hereinafter mentioned shall have the meaning following: Interpretation of terms.
  - (a) "company" shall mean a company incorporated under this Act;
  - (b) "Court" shall mean the Supreme Court of Newfoundland;
  - (c) "Gazette" shall mean *The Newfoundland Gazette*;
  - (d) "judge" shall mean a judge of the Supreme Court;
  - (e) "office copy" shall mean a copy certified by the proper officer;
  - (f) "prescribed" means prescribed by rules;
  - (g) "registered office of a company" shall mean the place which has been the registered office of the company for the greater part of the six months immediately preceding the presentation of the petition for winding up the company;
  - (h) "Registrar" shall mean the Registrar of Companies appointed under this Act, or his deputy;
  - (i) "rules" means rules made under this Act and includes forms.

"Subsidiary company" defined.

**3.—(1)** For the purposes of this Act, a company is deemed to be a subsidiary of another company if, but only if,

- (a) it is controlled by
  - (i) that other,
  - (ii) that other and one or more companies each of which is controlled by that other, or
  - (iii) two or more companies each of which is controlled by that other; or
- (b) it is a subsidiary of a company which is that other's subsidiary.

"Parent company" defined.

**(2)** For the purposes of this Act a company is deemed to be another's parent company if, but only if, that other is its subsidiary.

**(3)** For the purposes of this section, a company shall be deemed to be controlled by another company or person or by two or more companies if, but only if,

- (a) shares of the first-mentioned company carrying more than fifty per cent of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of such other company or person or by or for the benefit of such other companies; and
- (b) the votes carried by such shares are sufficient, if exercised, to elect a majority of the board of directors of the first-mentioned company.

Prohibition of banking companies.

**4.** No company or association shall be formed under this Act for the purpose of carrying on the business of banking.

Prohibition of partnerships exceeding certain number.

**5.** No company, association, or partnership consisting of more than ten persons shall hereafter be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the company, association, or partnership, or by the individual members thereof, unless it is registered as a company

under this Act, or is formed in pursuance of some other Act of the Legislature.

PART I.

*Constitution, Incorporation, and Registration of Companies and Associations under this Act.*

MEMORANDUM OF ASSOCIATION.

6. Any three or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association, and otherwise complying with the requisitions of this Act in respect of registration, form an incorporated company with or without limited liability.

Mode of forming company.

7. The liability of the members of a company formed under this Act may, according to the memorandum of association, be limited either to the amount, if any, unpaid, on the shares respectively held by them, or to such amount as the members may respectively undertake by the memorandum of association to contribute to the assets of the company in the event of its being wound up.

Mode of limiting liability of members.

8. Where a company is formed on the principle of having the liability of its members limited to the amount unpaid on their shares, hereinafter referred to as a company limited by shares, the memorandum of association shall contain the following things, that is to say,

Memorandum of association of a company limited by shares.

- (a) the name of the proposed company, with the addition of the word "limited" as the last word in such name;
- (b) the objects for which the proposed company is to be established;
- (c) a declaration that the liability of the members is limited;
- (d) the amount of capital with which the company proposes to be registered, divided into shares of a certain fixed amount;

subject to the following regulations,

- (e) that no subscriber shall take less than one share;
- (f) that each subscriber of the memorandum of association shall write opposite to his name the number of shares he takes.

No par value shares.

**9.**—(1) Notwithstanding anything to the contrary contained in this Act, the memorandum or articles of association of a company as originally framed or as altered by a special resolution in the manner hereinafter provided may provide for the issue or subdivision of any or all of the shares of the capital of the company without any nominal or par value or for the issue of shares without nominal or par value in exchange for shares with nominal or par value.

(2) Each share of the capital stock without nominal or par value shall be equal to every other such share of the capital stock subject to the preferences, restrictions or other conditions, if any, attached to any class of shares.

(3) Every certificate of shares without nominal or par value shall have plainly written or printed upon its face the number of such shares which it represents, the number of such shares which the company is authorized to issue and the number of other shares and their nominal or par values which the company is authorized to issue, and no such certificate shall express any nominal or par value of the shares in respect of which it is issued.

(4) In the absence of other provisions in that behalf in the memorandum or articles of association of the company, the issue and allotment of shares without nominal or par value authorized by this section may be fixed by the board of directors of the company and the number and allotment of shares without nominal or par value to be exchanged for each share with a nominal or par value previously issued may be fixed by the board of directors of the company.

(5) Any and all shares issued as permitted by this section shall be deemed fully paid and non-assessable on receipt by the company of the consideration for the issue and allotment thereof, or

the shares of nominal or par value for which they are exchanged, and the holder of such shares shall not be liable to the company or to its creditors in respect thereof.

(6) The amount of capital with which the company shall carry on business shall not be less than the aggregate amount of the par value of outstanding fully paid par value shares, if any, or of any less amount paid up on par value shares, together with the amount of the consideration received upon the issue and allotment of the shares without nominal or par value from time to time outstanding.

(7) Subject to any provision to the contrary contained in any mortgage, trust deed or agreement of any kind to which the company is a party, a company has and is deemed to have had power to convert or exchange shares having nominal or par value into or for shares without nominal or par value.

(8) Where any shares in a company are without nominal or par value, the memorandum or articles of association may for the purpose of computing the fees payable under Table B also state the maximum price or consideration at or for which such shares may be issued and which shall not be less than one dollar for each share.

**10.** Where a company is formed on the principle of having the liability of its members limited to such amount as the members respectively undertake to contribute to the assets of the company in the event of the same being wound up, hereinafter referred to as a company limited by guarantee, the memorandum of association shall contain the following things, that is to say,

Memorandum  
of association  
of a company  
limited by  
guarantee.

- (a) the name of the proposed company, with the addition of the word "limited" as the last word in such name;
- (b) the town in which the registered office of the company is proposed to be situate;
- (c) the objects for which the proposed company is to be established;

- (d) a declaration that each member undertakes to contribute to the assets of the company, in the event of the same being wound up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member, and of the costs, charges and expenses of winding up the company, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding a specified amount.

Memorandum of association of an unlimited company.

**11.** Where a company is formed on the principle of having no limit placed on the liability of its members, hereinafter referred to as an unlimited company, the memorandum of association shall contain the following things, that is to say,

- (a) the name of the proposed company;
- (b) the town in which the registered office of the company is proposed to be situate;
- (c) the objects for which the proposed company is to be established.

Signature and effect of memorandum of association.

**12.** The memorandum of association shall be signed by each subscriber in the presence of and be attested by one witness at the least. It shall when registered bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in the memorandum contained on the part of himself, his executors and administrators, a covenant to observe all the conditions of such memorandum, subject to the provisions of this Act.

#### ARTICLES OF ASSOCIATION.

Regulations to be prescribed by articles of association.

**13.** The memorandum of association may, in the case of a company limited by shares, and shall, in the case of a company limited by guarantee or unlimited, be accompanied, when registered, by articles of association signed by the subscribers to the memorandum of association, and prescribing such regulations for the company as the subscribers to the memorandum of association deem expedient. The articles shall be expressed in separate

paragraphs, numbered arithmetically. They may adopt all or any of the provisions contained in the Table marked A in the First Schedule hereto. They shall in the case of a company, whether limited by guarantee or unlimited, that has a capital divided into shares, state the amount of capital with which the company proposes to be registered; and in the case of a company, whether limited by guarantee or unlimited, that has not a capital divided into shares, state the number of members with which the company proposes to be registered, for the purpose of enabling the Registrar to determine the fees payable on registration. In a company limited by guarantee or unlimited, and having a capital divided into shares, each subscriber shall take one share at the least, and shall write opposite to his name in the memorandum of association the number of shares he takes.

**14.** In the case of a company limited by shares, if the memorandum of association is not accompanied by articles of association, or in so far as the articles do not exclude or modify the regulations contained in the Table marked A in the First Schedule hereto, the last-mentioned regulations shall, so far as the same are applicable, be deemed to be the regulations of the company in the same manner and to the same extent as if they had been inserted in articles of association, and the articles had been duly registered.

Application of  
Table A.

**15.** The articles of association shall be written or printed and shall be signed by each subscriber in the presence of, and be attested by, one witness at least. When registered, they shall bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in such articles contained a covenant on the part of himself, his executors and administrators, to conform to all the regulations contained in such articles, subject to the provisions of this Act; and all moneys payable by any member to the company, in pursuance of the conditions and regulations of the company, or any of such conditions and regulations, shall be deemed to be a debt from such member to the company, in the nature of a specialty debt.

Signature and  
effect of articles  
of association.

**16.** Every company incorporated under this Act has, and shall be deemed to have had, subject to specific restrictions, if any, in that regard contained in its memorandum or articles of

Power to  
contribute  
funds for  
certain  
purposes.

association, the power and capacity, exercisable by or under authority of its directors, at any time and from time to time, to establish and support or aid in the establishment and support of associations, institutions, funds, trusts and conveniences intended or calculated to benefit employees or ex-employees of the company or the dependents or connections of such persons, and to grant pensions and allowances, and to make payments towards or for insurance or for any other object or purpose like or similar to the foregoing, and to contribute, subscribe or guarantee money to or for any charitable, benevolent or educational object or purpose or any other object or purpose deemed by its directors to be of a public general or useful nature.

#### REGISTRATION.

Appointment,  
duties, etc., of  
Registrar.

**17.** The registration of companies under this Act shall be conducted as follows, that is to say,

- (a) the Lieutenant-Governor in Council may appoint a Registrar under this Act and a deputy registrar and such officers shall hold office during pleasure;
- (b) the Lieutenant-Governor in Council may make such regulations as he thinks fit with respect to the duties to be performed by such Registrar and deputy registrar;
- (c) the Lieutenant-Governor in Council may, from time to time, determine the place at which the office for the registration of companies is to be established;
- (d) the Lieutenant-Governor in Council may, from time to time, direct a seal or seals to be prepared for the authentication of any documents required for or connected with the registration of companies;
- (e) every person may inspect the documents kept by the Registrar; and there shall be paid for such inspection such fees as may be appointed by the Lieutenant-Governor in Council, not exceeding twenty-five cents for each inspection; and any person may require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other

document, to be certified by the Registrar; and there shall be paid for such certificate of incorporation, certified copy or extract, such fees as the Lieutenant-Governor in Council may appoint, not exceeding one dollar for the certificate of incorporation and ten cents for each folio of such copy or extract;

- (f) there shall be paid to the Registrar and the deputy registrar such salary as the Lieutenant-Governor in Council may direct.

**18.** The memorandum of association and the articles of association, if any, shall be delivered to the Registrar, who shall retain and register the same. There shall be paid to the Registrar by a company having a capital divided into shares, in respect of the several matters mentioned in the Table marked B in the First Schedule hereto, the several fees therein specified, and by a company not having a capital divided into shares, in respect of the several matters in the Table marked C in the First Schedule hereto the several fees therein specified or such smaller fees as the Lieutenant-Governor in Council may from time to time direct.

Registration of memorandum and articles of association and fees.

**19.** The Registrar shall pay through the Department of Justice into the Consolidated Revenue Fund all fees paid to or collected by him under or in pursuance of this Act or the regulations.

Disposition of fees.

**20.—(1)** Upon the registration of the memorandum of association and of the articles of association, in cases where articles of association are required by this Act or by the desire of the parties to be registered, the Registrar shall certify under his hand that the company is incorporated, and in the case of a limited company that the company is limited. The subscribers of the memorandum of association, together with such other persons as may from time to time become members of the company, shall thereupon be a body corporate by the name contained in the memorandum of association, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, with power to hold lands, but with such liability on the part of the members to contribute to the assets of the company in the event of the same being wound

Effect of registration.

up as is hereinafter mentioned. A certificate of the incorporation of any company given by the Registrar shall be conclusive evidence that all the requisitions of this Act in respect of registration have been complied with. Any certificate of the incorporation of any company given by the Registrar shall be received in evidence as if it were the original certificate; and any copy of or extract from any of the documents or part of the documents kept and registered at the office for the registration of joint stock companies in this province, if duly certified to be a true copy under the hand of the Registrar, and whom it shall not be necessary to prove to be the Registrar, shall, in all legal proceedings, civil or criminal, and in all cases whatsoever, be received in evidence as of equal validity with the original document.

(2) A statutory declaration by a solicitor of the Supreme Court engaged in the formation of the company of compliance with all or any of the requirements of this Act in respect of registration shall be filed with the Registrar at the time of the filing of the memorandum of association and articles of association, if any, and the Registrar may accept the declaration as sufficient evidence of compliance with the requirements of this Act in respect of registration.

Copies of memorandum and articles to be given to members.

**21.** A copy of the memorandum of association, having annexed thereto the articles of association, if any, shall be forwarded to every member, at his request, on payment of the sum of twenty-five cents or such less sum as may be prescribed by the company for each copy; and if any company makes default in forwarding a copy of the memorandum of association and articles of association, if any, to a member, in pursuance of this section, the company so making default shall for each offence incur a penalty not exceeding five dollars.

Prohibition of use of certain names.

**22.—(1)** No company shall be registered under a name

- (a) identical with that by which a subsisting company is already registered or so nearly resembling that name as to be calculated to deceive except where the subsisting company is in the course of being dissolved and testifies its consent in such manner as the Registrar requires;

- (b) without the consent of the Lieutenant-Governor in Council which contains the words "Newfoundland", "Labrador", "Royal" or "Imperial" or which in the opinion of the Registrar suggests or is calculated to suggest the patronage of Her Majesty or of any member of the Royal Family or connection with Her Majesty's Government or any department thereof;
- (c) without the consent of the Attorney General which contains the word "Canada" or "Canadian"; or
- (d) which, in the opinion of the Registrar, is otherwise objectionable.

(2) If any company, through inadvertence or otherwise, has been registered under a name

Change of name in those cases.

- (a) identical with that by which a subsisting company is already registered, or which the Registrar deems so nearly to resemble that name as to be calculated to deceive, or contains any of the words prohibited under paragraph (b) or (c) of subsection (1), except where consent has been given under paragraph (a), (b) or (c) of subsection (1); or
- (b) which the Registrar deems to be otherwise objectionable by reason of this section or otherwise

the company

- (c) may, with the consent of the Registrar, change its name; and
- (d) shall, upon the direction of the Registrar, change its name and if the company fails to change its name within two months after being so directed the Registrar may change its name to any name that he deems to be unobjectionable.

Entry of new name on register; certificate.

(3) When a change of name of a company is made under subsection (2) the Registrar shall enter the new name on the register in the place of the former name and shall issue a certificate of incorporation which has been altered to meet the circumstances of the case.

Effect of alteration of name.

(4) An alteration of the name of a company under this section shall not affect any rights or obligations of the company or render defective any legal proceedings instituted or to be instituted by or against the company and any legal proceedings may be continued or commenced by or against the company by its new name that might have been continued or commenced by or against the company by its former name.

Application to court if company or member aggrieved with Registrar's decision.

(5) If a company or a member thereof feels aggrieved by the company's having been directed by the Registrar to change its name, or by the Registrar's having changed its name, the company or member may apply to the Supreme Court or a judge thereof and the Court or judge, if satisfied that it is just so to do, may order that the name of the company shall not be changed, or that its former name be restored to the register, as the case may be, and the Court or judge may, by the order, give such directions and make such provisions as seem just for placing the company and all persons in the same position, as nearly as may be, as if such direction had never been given, or as if the name of the company had never been changed, as the case may be.

Certificate.

(6) When the former name of a company has been restored to the register in accordance with subsection (5) the Registrar shall issue a certificate of incorporation altered to meet the circumstances of the case.

Registrar may refuse to register objectionable name.

(7) The Registrar may refuse to register any name which he deems to be objectionable.

Registrar may refuse to register company.

(8) Notwithstanding this Act or any other statute or law, the Registrar may, with the approval of the Lieutenant-Governor in Council, refuse to register any company.

Reservation of company name.

**23.** The Registrar may, on the application in writing of any person and on the payment of a fee of ten dollars, reserve

- (a) a corporate name for
  - (i) an intended company,
  - (ii) a company about to change its name; or
- (b) the name of a foreign company intending to apply for registration or about to change its name

for a period of forty-five days or such lesser period as the Registrar may specify, and when a reservation is made under this section it shall be in writing and filed by the Registrar.

**24.**—(1) Where the Registrar has reasonable cause to believe that a company, whether registered before or after the passing of this Act, is not carrying on business or in operation, he shall send to the company by post a letter inquiring whether the company is carrying on business or in operation.

Powers of Registrar to strike names of defunct companies off the register.

(2) If the Registrar does not within one month of sending the letter receive any answer thereto, he shall, within fourteen days after the expiration of the month, send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received by him, and that if an answer is not received to the second letter, within one month from the date thereof, a notice will be published in *The Newfoundland Gazette* with a view to striking the name of the company off the register.

(3) If the Registrar does not within one month after sending the second letter receive any answer thereto, he may publish in *The Newfoundland Gazette* and send to the company a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register, and the company will be dissolved.

(4) If the Registrar receives from the company an answer to a letter sent pursuant to subsection (1) or (2) to the effect that it is not carrying on business or is not in operation, or where a notice is published and sent pursuant to subsection (3) and the time specified therein has expired without the company's show-

ing cause why the company should not be struck off the register, the Registrar shall strike the name of the company off the register and shall publish a notice thereof in *The Newfoundland Gazette* and on publication of the notice in *The Newfoundland Gazette* the company whose name is so struck off is dissolved, but any liability of a director, managing officer, or member of the company shall continue as if the company had not been dissolved.

(5) If any company or member thereof feels aggrieved by the name of such company having been struck off the register in pursuance of this section, the company or member may apply to the Court and the Court, if satisfied that the company was at the time of the striking off carrying on business or in operation, and that it is just to do so, may order the name of the company to be restored to the register, and thereupon the company shall be deemed to have continued in existence as if the name thereof had never been struck off; and the Court may, by the order, give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had never been struck off.

(6) A letter or notice authorized or required for the purposes of this section to be sent to a company may be sent by post addressed to the company at its registered office, or if no office has been registered, addressed to the care of some director or officer of the company, or if there be no director or officer of the company, whose name and address are known to the Registrar, the letter or notice (in identical form) may be sent to each of the persons who subscribed the memorandum of association, addressed to him at the address mentioned in that memorandum.

#### PROSPECTUS.

Copy of  
prospectus to  
be filed.

**25.—**(1) For the purposes of this section “prospectus” means any prospectus, notice, circular, advertisement or other document offering to the public for subscription or purchase any shares or securities of a company or an intended company.

(2) A copy of every prospectus issued by or on behalf of a company shall, whether or not it is required to be registered by

or under The Securities Act, be filed with the Registrar under this Act within seven (7) days from the date of the prospectus.

(3) Notwithstanding subsection (2), the Registrar may exempt any person or company from the filing requirements of that subsection where

- (a) a copy of the prospectus referred to in subsection (2) has been filed with the registrar of securities under The Securities Act or regulations made under that Act; and
- (b) notice of the filing referred to in paragraph (a) has been filed with the Registrar.

(4) This section applies to a prospectus issued in relation to an intended company, or by or on behalf of any person who is or has been engaged or interested in the formation or promotion of a company or in the organization of a company.

(5) Any person or company that fails to comply with the provisions of this section is guilty of an offence and liable on summary conviction to a fine not exceeding two hundred dollars.

**26.—**(1) The Lieutenant-Governor in Council may make regulations

Regulations  
concerning  
prospectuses.

- (a) prescribing the information to be contained in any prospectus issued by or on behalf of any company or intended company, or by or on behalf of any person who is or has been engaged or interested in the formation, promotion or organization of a company;
- (b) prescribing what, if any, documents shall be annexed to the prospectus; and
- (c) prohibiting the issuance of any prospectus which
  - (i) does not contain the prescribed information or any part thereof, or
  - (ii) does not have annexed thereto the prescribed documents or any of them;

and, without limitation of the foregoing, this subsection applies to and in respect of a foreign company as defined in Part VI, other than a dominion company as defined in that Part.

Offence. (2) Every person who fails to comply with or otherwise contravenes any of the provisions of regulations made under subsection (1) is guilty of an offence.

Prescribing penalties. (3) The Lieutenant-Governor in Council may, in regulations made under subsection (1), prescribe penalties for offences under subsection (2).

Penalty. (4) Every person who is guilty of an offence under subsection (2) is liable on summary conviction to the penalty prescribed therefor under subsection (3).

Publication and date of coming into force of regulations. (5) Regulations made under subsection (1) shall be published in *The Newfoundland Gazette* and shall have effect from the date of publication or from such later date as may be stated in the regulations, and the regulations shall be laid before the Legislature within fifteen days after they are made, if the Legislature is then in session, and, if it is not, then within fifteen days after the commencement of the next ensuing session.

Definition. (6) For the purposes of this section "prospectus" means a prospectus as defined by subsection (1) of Section 25.

Liability for statements in prospectus.

**27.**—(1) Where a prospectus or notice invites persons to subscribe for shares in or debentures or debenture stock of a company, every person who is a director of the company at the time of the issue of the prospectus or notice, and every person who having authorized such naming of him is named in the prospectus or notice as a director of the company or as having agreed to become a director of the company either immediately or after an interval of time, and every promoter of the company, and every person who has authorized the issue of the prospectus or notice, shall be liable to pay compensation to all persons who shall subscribe for any share, debentures, or debenture stock on the faith of such prospectus or notice for the loss or damage they may have sustained by reason of any untrue statement in the prospectus or notice, or in any report or memorandum appear-

ing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved

- (a) with respect to every such untrue statement not purporting to be made on the authority of an expert, or of a public official document or statement, that he had reasonable ground to believe, and did up to the time of the allotment of the shares, debentures, or debenture stock, as the case may be, believe that the statement was true; and
- (b) with respect to every such untrue statement purporting to be a statement by or contained in what purports to be a copy of or an extract from a report or valuation of an engineer, valuer, accountant, or other expert, that it fairly represented the statement made by such engineer, valuer, accountant, or other expert, or was a correct and fair copy of, or extract from, the report or valuation: Provided always, that notwithstanding that such untrue statement fairly represented the statement made by such engineer, valuer, accountant, or other expert, or was a correct and fair copy of an extract from the report or valuation, such director, person named, promoter or other person, who authorized the issue of the prospectus or notice as aforesaid, shall be liable to pay compensation as aforesaid, if it be proved that he had no reasonable ground to believe that the person making the statement, report, or valuation was competent to make it; and
- (c) with respect to every such untrue statement purporting to be a statement made by an official person, or contained in what purports to be a copy of or extract from a public official document, that it was a correct and fair representation of such statement or copy of, or extract from, such document, or unless it is proved that having consented to become a director of the company he withdrew his consent before the issue of the prospectus or notice, and that the prospectus or notice was issued without his authority or consent or that the prospectus or notice was issued without his knowledge or consent,

and that on becoming aware of its issue he forthwith gave reasonable public notice that it was so issued without his knowledge or consent, or that after the issue of such prospectus or notice and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto, and caused reasonable public notice of such withdrawal, and of the reason therefor, to be given.

(2) A promoter in this section means a promoter who was a party to the preparation of the prospectus or notice, or of the portion thereof, containing such untrue statement, but shall not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company.

(3) Where any company existing at the 19th day of July, A.D. 1899, which has issued shares or debentures, shall be desirous of obtaining further capital by subscriptions for shares or debentures, and for that purpose shall issue a prospectus or notice, no director of such company shall be liable in respect of any statement therein, unless he shall have authorized the issue of such prospectus or notice or have adopted or ratified the same.

(4) In this section the word "expert" includes any person whose profession gives authority to a statement made by him.

Indemnity  
where name of  
person has been  
improperly  
inserted as a  
director.

**28.** Where any such prospectus or notice as aforesaid contains the name of a person as a director of the company or as having agreed to become a director thereof, and such person has not consented to become a director, or has withdrawn his consent before the issue of such prospectus or notice, and has not authorized or consented to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus or notice was issued, and any other person who authorized the issue of such prospectus or notice shall be liable to indemnify the person named as a director of the company, or as having agreed to become a director thereof as aforesaid, against all damages, costs, charges and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or notice, or in defending himself against any action or legal proceedings brought against him in respect thereof.

**29.** Every person who by reason of his being a director, or named as a director or as having agreed to become a director or of his having authorized the issue of the prospectus or notice has become liable to make any payment under the provisions of this Act, shall be entitled to recover contributions, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment.

Contributions  
from  
co-directors,  
etc.

#### AMALGAMATION.

**30.**—(1) Any two or more companies incorporated under this Act or registered under Part V of this Act, including a parent and subsidiary company, having the same or similar objects, may amalgamate and continue as one company.

Amalgamation.

(2) The companies proposing to amalgamate may enter into an amalgamation agreement, which agreement shall specify

Amalgamation  
agreement.

- (a) the terms and conditions of the amalgamation;
- (b) the mode of carrying the amalgamation into effect;
- (c) the name of the amalgamated company;
- (d) the place in the province where the registered office of the amalgamated company is to be situated;
- (e) the amount of the authorized capital of the amalgamated company and the division of the capital into shares;
- (f) the objects for which the amalgamated company is to be established;
- (g) the names, occupations and places of residence of the first directors of the amalgamated company;
- (h) how and when subsequent directors are to be elected;
- (i) the manner of converting the authorized and issued capital of each of the amalgamating companies into that of the amalgamated company; and

- (j) such other details as may be necessary to perfect the amalgamation and to provide for the subsequent management and working of the amalgamated company.

Submission of agreement to shareholders.

(3) The amalgamation agreement shall be submitted to the shareholders of each of the amalgamating companies at general meetings called for the purpose of considering the agreement, and, if three-fourths of the votes cast at each meeting are in favour of the agreement,

- (a) the secretary of each of the amalgamating companies shall certify that fact under the corporate seal of his company; and
- (b) the amalgamation agreement is deemed to be adopted by each of the amalgamating companies.

Application to Court for approval of agreement.

(4) At any time after the amalgamation agreement is deemed to be adopted in accordance with subsection (3), the amalgamating companies may apply to the Court by petition for an order approving the amalgamation.

Notice of application to Court.

(5) The Court may direct that notice be given of the time and place of the hearing of the application for the approving order referred to in subsection (4) to such of the

- (a) creditors, and
- (b) shareholders who voted against the adoption of the amalgamation agreement

of each amalgamating company and in such manner as it may direct.

Court to determine matter.

(6) The Court shall hear and determine the matter and may approve the agreement as presented or may approve it subject to compliance with such terms and conditions as it thinks fit having regard for the rights and interests of all parties including the dissenting shareholders and creditors.

Filing with Registrar.

(7) The amalgamation agreement and the Court order of approval shall be filed with the Registrar together with proof of

compliance with any terms and conditions that may have been imposed.

(8) On receipt of the documents referred to in subsection (7) the Registrar may take all necessary steps to bring the amalgamation into effect including the issue of a certificate of incorporation confirming the agreement and on and from the date of such issue the companies are amalgamated and are continued as one company by the name specified in the certificate and the amalgamated company possesses all the property rights, privileges, and franchises and is subject to all the contracts, liabilities, and debts of each of the amalgamating companies.

Effect of filing.

## PART II.

### *Distribution of Capital and Liability of Members and Directors of Companies and Associations under this Act.*

#### DISTRIBUTION OF CAPITAL.

**31.** The shares or other interest of any member in a company shall be personal estate, capable of being transferred in manner provided by the regulations of the company, and each share shall in the case of a company having a capital divided into shares, be distinguished by its appropriate number: Provided that, if at any time all the issued shares in a company, or all the issued shares therein of a particular class, are fully paid up and rank *pari passu* for all purposes, none of those shares need thereafter have a distinguishing number so long as it remains fully paid up and ranks *pari passu* for all purposes with all shares of the same class for the time being issued and fully paid up.

Nature of interest in company.

**32.** The subscribers of the memorandum of association of any company shall be deemed to have agreed to become members of the company whose memorandum they have subscribed, and upon the registration of the company, shall be entered as members on the register of members hereinafter mentioned; and every other person who has agreed to become a member of a company and whose name is entered on the register of members, shall be deemed to be a member of the company.

Definition of "member".

Transfer by  
personal  
representative.

**33.** Any transfer of the share or other interest of a deceased member of a company made by his personal representative, shall, notwithstanding such personal representative may not himself be a member, be of the same validity as if he had been a member at the time of the execution of the instrument of transfer.

Register of  
members.

**34.—(1)** Every company shall cause its secretary or such other officer or officers or agent or agents as it may from time to time authorize and appoint for the purpose to keep

(a) at the company's registered office; or

(b) on resolution of its directors, at the head or any branch office in the province of a trust company authorized to carry on business in the province, if such office of the trust company is not more than five miles distant from the registered office of the company,

in one or more books, a register of its members, and there shall be entered therein

(c) the names and addresses of the members of the company, with the addition, if the company has its capital divided into shares, of a statement of the shares held by each member;

(d) the amount paid or agreed to be considered as paid on the shares of each member;

(e) the date on which the name of any person was entered in the register as a member; and

(f) the date on which any person ceased to be a member.

Offence.

(2) Any company which fails to comply with or contravenes any provision of subsection (1), and every director or manager of a company who knowingly and wilfully authorizes or permits such failure or contravention, is guilty of an offence and liable on summary conviction to a penalty not exceeding twenty-five dollars.

## (3) Each day's continuance

Idem.

- (a) by the company of the failure to comply with or of the contravention of any provision of subsection (1); or
- (b) by a director or manager of the company knowingly and wilfully to authorize or permit such failure or contravention

constitutes a separate offence.

(4) A trust company with whom a register of members is authorized to be deposited in accordance with subsection (1) is not entitled to a lien on the register.

Trust company  
not to have  
lien on register.

**35.—(1)** In this section the expression "principal register" means the register of members required to be kept by Section 34.

Branch  
registers.

(2) A company having a share capital may, if so authorized by its articles of association, cause to be kept outside the province a branch register or branch registers of its members.

(3) The company shall give to the Registrar notice of the situation of the office where its principal register, if kept elsewhere than at its registered office, is kept and where any branch register is kept and of any change in the situation of the principal register and of any branch register and of the discontinuance of any branch register in the event of its being so discontinued, and such notice shall be given as soon as possible after the change or discontinuance is made.

(4) A branch register is deemed to be part of the company's register of members.

(5) A branch register shall be kept in the same manner as the principal register is by this Act required to be kept, except that the advertisement required by Section 44 before closing a branch register shall be inserted in a newspaper circulating in the district in which the branch register is kept.

(6) The company shall cause to be transmitted to its registered office or to such other office or place in Newfoundland as

may from time to time be designated by resolution of its directors as the location of its principal register a copy of every entry in a branch register as soon as possible after the entry is made, and shall cause to be kept at its registered office or at such other office or place where the principal register is situated, duly entered up from time to time, a duplicate of each branch register, and the duplicate register shall for all purposes of this Act be deemed part of the principal register.

(7) Unless otherwise provided by its articles of association and subject to subsection (8), the shares of a company are interchangeably transferable on its principal register and on any branch register and the entry of the transfer of any share in the capital of the company on the principal register or on a branch register shall be a complete and valid transfer.

(8) On the death of a member registered in the principal register or in a branch register the shares of the deceased member shall be transferable on the principal register and not elsewhere.

(9) The company may discontinue the keeping of any branch register, and thereupon all entries in that register shall be transferred to some other branch register kept by the company in the same country, or to the principal register.

(10) Subject to this Act, a company may by its articles make such provisions as it may think fit respecting the keeping of branch registers.

Duplicate seal  
at branch  
register.

**36.—**(1) Any company having a branch register in any place outside of the Province of Newfoundland may, if authorized by its articles of association, have for use in any such place an official seal which will be a facsimile of the common seal of the company.

(2) A company having such an official seal may authorize any person or persons appointed for the purpose to affix the same to any deed, document or share certificate to be executed by such person or persons for and on behalf of the company.

(3) The person or persons affixing such seal shall by writing under his or their hand on the deed, document or share certificate to which the seal is affixed certify the date and the place of the affixing of same.

(4) A deed, document or share certificate to which such an official seal is duly affixed shall be binding on the company.

**37.**—(1) Every company having a capital divided into shares shall, not later than the thirty-first day of March in each year after the date of its registration, forward to the Registrar a list certified by a director, officer or solicitor of the company, made up to the thirty-first day of December last preceding, of all persons who on the said thirty-first day of December were members of the company, accompanied by the fee specified for the registration of such list in Part I of the Table marked B in the First Schedule hereto, and such list shall state the names, addresses and occupations, if such occupations are known, of all the members on the list and the number of shares held by each member, and shall contain a summary specifying

Annual list of members.

- (a) the amount of the capital of the company, and the number of shares into which it is divided;
- (b) the number of shares taken from the commencement of the company up to the date of the summary;
- (c) the amount of calls made on each share;
- (d) the total amount of calls received;
- (e) the total amount of calls unpaid;
- (f) the total amount of shares forfeited;
- (g) the names, addresses and occupations, if such occupations are known, of the persons who have ceased to be members since the last list was made and the number of shares held by each of them;
- (h) the total amount of debt due from the company in respect of all mortgages and charges which require regis-

tration under this Act or which would require such registration, if created, after the commencement of this Act; and

- (i) the names and addresses of the persons who are the directors of the company at the date of the summary;

and a duplicate of the list and summary shall be contained in a separate part of the register of members, and the summary shall distinguish between the shares issued for cash and the shares issued otherwise than for cash, or only partly for cash.

Exemption.

(2) The Registrar may in his discretion exempt a company

- (a) whose shares are listed on a stock exchange; or
- (b) which has more than fifty members

from complying with the whole or any part of subsection (1) but the company shall at the times prescribed by that subsection make and forward to the Registrar a list of the directors of the company showing the number of shares, if any, held by each of the directors, accompanied by the fee specified for the registration of such list in Part I of the Table marked B in the First Schedule hereto.

Registration of list.

(3) The Registrar shall retain and register the list required to be forwarded to him by subsection (1) or, if an exemption is made by the Registrar under subsection (2), the list required to be forwarded to him by subsection (2), on receipt of the same and of the fee specified for the registration thereof in Part I of the Table marked B in the First Schedule hereto.

Offence and penalty for company.

**38.**—(1) Every company having a capital divided into shares, which fails to comply with or otherwise contravenes subsection (1) of Section 37, or, if exempted by the Registrar from complying with the whole or any part of that subsection, which fails to comply with or otherwise contravenes subsection (2) of Section 37, is guilty of an offence and is liable on summary conviction to a fine of not less than twenty-five dollars and each day's continuance of such failure or contravention constitutes a separate offence.

(2) Every director, officer or manager of a company having a capital divided into shares who authorizes or knowingly permits that company to fail to comply with or otherwise contravene subsection (1) of Section 37 or, if that company is exempted by the Registrar from complying with the whole or any part of that subsection, who authorizes or knowingly permits that company to fail to comply with or otherwise contravene subsection (2) of Section 37, is guilty of an offence and is liable on summary conviction to a fine of not less than fifty dollars and in default of payment to imprisonment for a term not exceeding three months.

Offence and penalty for directors, etc.

**39.** Every company having a capital divided into shares, that has consolidated and divided its capital into shares of larger amount than its existing shares, or converted any portion of its capital into stock, shall give notice to the Registrar of such consolidation, division or conversion, specifying the shares so consolidated, divided or converted.

Company to give notice of consolidation or of conversion of stock.

**40.** Where any company having a capital divided into shares has converted any portion of its capital into stock, and given notice of such conversion to the Registrar, all the provisions of this Act which are applicable to shares only shall cease as to so much of the capital as is converted into stock and the register of members hereby required to be kept by the company, and the list of members to be forwarded to the Registrar, shall show the amount of stock held by each member in the list instead of the amount of shares, and the particulars relating to shares hereinbefore required.

Effect of conversion of shares into stock.

**41.—(1)** A company is not bound to see to the execution of any trust, express, implied or constructive, in respect of any share.

Trusts.

(2) The receipt of the shareholder in whose name the share is registered on the records of the company is a valid and binding discharge to the company for any payment made in respect of the share, whether notice of such trust has been given to the company or not.

Discharge.

(3) The company is not bound to see to the application of the money paid upon such receipt.

Application of money paid.

Authority to transfer.

(4) The written authorization of an executor, administrator, committee of a mentally incompetent person, guardian or trustee who is registered on the books of the company as holding shares in any such capacity is sufficient justification for the company to register a transfer of such shares, including a transfer into the name of such executor, administrator, committee of a mentally incompetent person, guardian or trustee absolutely.

Certificate of shares or stock.

**42.** A certificate, under the common seal of the company, specifying any share or shares or stock held by any member of a company, shall be *prima facie* evidence of the title of the member to the share or shares or stock therein specified.

Inspection of register.

**43.—(1)** Except when closed as hereinafter mentioned, the register of members shall during business hours, but subject to such reasonable restrictions as the company in general meeting may impose, be open for not less than two hours each business day to the inspection of any member free of charge and to the inspection of any other person upon the payment of twenty-five cents or such less sum as the company may prescribe for each inspection and every such member or other person may require a copy of such register or of any part thereof or of such list or summary of members as is hereinbefore mentioned on payment of ten cents for every hundred words required to be copied.

(2) If the inspection or copy referred to in subsection (1) is refused,

(a) the company; and

(b) every director or manager of the company who knowingly authorizes or permits such refusal

is guilty of an offence and liable on summary conviction to a penalty of ten dollars; and

(c) each day's continuance of such refusal constitutes a separate offence.

(3) Where the inspection or copy referred to in subsection (1) is refused, any judge sitting in chambers may, by order, compel an immediate inspection of the register.

**44.** Any company may, upon first giving notice by advertisement in some newspaper circulating in the district in which any register of members of the company is situated, close the register of members for any time or times not exceeding in the aggregate thirty days in any year.

Power to close register.

**45.** Where a company has a capital divided into shares, whether such shares may or may not have been converted into stock, notice of any increase in such capital beyond the registered capital, and where a company has not a capital divided into shares, notice of any increase in the number of members beyond the registered number, shall be given to the Registrar, in the case of an increase of capital, within fifteen days from the date of the passing of the resolution by which such increase has been authorized, and in the case of an increase of members within fifteen days from the time at which such increase of members has been resolved on or has taken place, and the Registrar shall forthwith record the amount of such increase of capital or members. If such notice is not given within the period aforesaid the company in default shall incur a penalty not exceeding twenty-five dollars for every day during which such neglect to give notice continues, and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

Notice of increase of capital and of members to be given to Registrar.

**46.** If the name of any person is, without sufficient cause, entered in or omitted from the register of members of any company, or if default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member of the company, the person or member aggrieved, or any member of the company, or the company itself may by motion in Court, or by application to a judge sitting in chambers, apply for an order of the Court that the register may be rectified; and the Court may either refuse application, with or without costs, to be paid by the applicant, or it may, if satisfied of the justice of the case, make an order for the rectification of the register, and may direct the company to pay all the costs of such motion or application, and any damages the party aggrieved may have sustained. The Court may in any proceeding under this section decide on any question relating to the title of any person who is a party to such proceeding to have his name en-

Remedy for improper entry or omission of entry in register.

tered in or omitted from the register whether such question arises between two or more members or alleged members, or between any members or alleged members and the company, and generally the Court may in any such proceeding decide any question that it may be necessary or expedient to decide for the rectification of the register: Provided that the Court may direct an issue to be tried, in which any question of law may be raised.

Notice to Registrar of rectification of register.

**47.** Whenever any order has been made rectifying the register, in the case of a company hereby required to send a list of its members to the Registrar, the Court shall by its order direct that due notice of such rectification be given to the Registrar.

Register to be evidence.

**48.** The register of members shall be *prima facie* evidence of any matters by this Act directed or authorized to be inserted therein.

Power to issue redeemable preference shares.

**49.—(1)** Subject to the provisions of this section, a company limited by shares may if so authorized by its articles issue preference shares which are, or at the option of the company are to be liable, to be redeemed: Provided that

- (a) no such shares shall be redeemed except out of profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of the redemption;
- (b) no such shares shall be redeemed unless they are fully paid;
- (c) the premium, if any, payable on redemption, must have been provided for out of the profits of the company or out of the company's share premium account before the shares are redeemed;
- (d) where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall out of profits which would otherwise have been available for dividends be transferred to a reserve fund, to be called "the capital redemption reserve fund", a sum equal to the nominal amount of the shares redeemed, and the provisions of this Act relating to the reduction of the

share capital of a company shall, except as provided in this section, apply as if the capital redemption reserve fund were paid-up share capital of the company;

- (e) the provisions of paragraph (d) of this subsection shall not apply where any such shares to be redeemed were allotted and issued pursuant to, and satisfied as to consideration by, the application of undivided profits of the company which were capitalized for the purpose of such issue.

(2) Subject to the provisions of this section, the redemption of preference shares thereunder may be effected on such terms and in such manner as may be provided by the articles of the company.

(3) The redemption of preference shares under this section by a company shall not be taken as reducing the amount of the company's authorized share capital.

(4) Where in pursuance of this section a company has redeemed or is about to redeem any preference shares, it shall have power to issue shares up to the nominal amount of the shares redeemed or to be redeemed as if those shares had never been issued, and accordingly the share capital of the company shall not for the purposes of Section 18 be deemed to be increased by the issue of shares in pursuance of this subsection: Provided that, where new shares are issued before the redemption of the old shares, the new shares shall not, for the purposes of Section 18, be deemed to have been issued in pursuance of this subsection unless the old shares are redeemed within one month after the issue of the new shares.

(5) The capital redemption reserve fund may, notwithstanding anything in this section, be applied by the company in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

**50.—(1)** If a company redeems any redeemable preference shares it shall within one month after so doing give notice thereof to the Registrar specifying the shares so redeemed.

Notice to  
Registrar of  
preference  
shares  
redeemed.

(2) If default is made in complying with this section, the company and every officer of the company who is in default is liable on summary conviction to a fine of ten dollars for every day during which the default continues.

#### LIABILITY OF MEMBERS.

Liability of present and past members of company.

**51.** In the event of a company being wound up, every present and past member of such company shall be liable to contribute to the assets of the company to an amount sufficient for payment of the debts and liabilities of the company, and the costs, charges and expenses of the winding up, and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves, with the qualifications following, that is to say,

- (a) no past member shall be liable to contribute to the assets of the company if he has ceased to be a member for a period of one year or upwards prior to the commencement of the winding up;
- (b) no past member shall be liable to contribute in respect of any debt or liability of the company contracted after the time at which he ceased to be a member;
- (c) no past member shall be liable to contribute to the assets of the company unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act;
- (d) in the case of a company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member;
- (e) in the case of a company limited by guarantee, no contribution shall be required from any member exceeding the amount of the undertaking entered into on his behalf by the memorandum of association;

- (f) no sum due to any member of a company in his character of a member by way of dividends, profits, or otherwise, shall be deemed to be a debt of the company, payable to such member in a case of competition between himself and any other creditor not being a member of the company; but any such sum may be taken into account for the purposes of the final adjustment of the rights of the contributories amongst themselves.

#### LIABILITY OF DIRECTORS.

**52.** Where a company is formed as a limited company, the liability of the directors or managers of such company, or the managing director, may if so provided by the memorandum of association be unlimited.

Company may have directors with unlimited liability.

**53.** The following are the contributions to be required in the event of the winding up of a limited company from any director or manager, whose liability is in pursuance of this Act unlimited,

Liability of director, past and present, where liability is unlimited.

- (a) subject to the provisions hereinafter contained, any such director or manager, whether past or present, shall in addition to his liability (if any) to contribute as an ordinary member, be liable to contribute as if he were at the date of the commencement of such winding up a member of an unlimited company;
- (b) no contribution required from any past director or manager, who has ceased to hold such office for a period of one year or upwards prior to the commencement of the winding up, shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the company;
- (c) no contribution required from any past director or manager, in respect of any debt or liability of the company contracted after the time at which he ceased to hold such office, shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the company;

- (d) subject to the provisions contained in the regulations of the company, no contribution required from any director or manager shall exceed the amount (if any) which he is liable to contribute as an ordinary member, unless the Court deems it necessary to require such contribution in order to satisfy the debts and liabilities of the company, and the costs, charges and expenses of the winding up.

Director with unlimited liability may have set-off.

**54.** In the event of the winding up of any limited company, the Court, if it thinks fit, may make to any director or manager of such company whose liability is unlimited, the same allowance by way of set-off as under Section 178 of this Act it may make to a contributory where the company is not limited.

Notice still to be given to director on his election that his liability will be unlimited.

**55.** In any limited company in which, in pursuance of this Act the liability of a director or manager is unlimited, the directors or managers of the company (if any) and the member who proposes any person for election or appointment to such office, shall add to such proposal a statement that the liability of the person holding such office will be unlimited, and the promoters, directors, managers, and secretary (if any) of such company, or one of them, shall, before such person accepts such office or acts therein, give him notice in writing that his liability will be unlimited. If any director, manager or proposer make default in adding such statement, or if any promoter, director, manager or secretary make default in giving such notice, he shall be liable to a penalty not exceeding five hundred dollars, and shall also be liable for any damage which the person so elected or appointed may sustain from such default, but the liability of the person elected or appointed shall not be affected by such default.

#### CALLS UPON SHARES.

Company may have some shares fully paid and others not.

**56.** Any company if authorized by its regulations as originally framed or as altered by special resolution, may do any one or more of the following things, namely,

- (a) make arrangements on the issue of shares for a difference between the holders of such shares in the amount of calls to be paid, and in the time of payment of such calls;

- (b) accept from any member of the company who assents thereto the whole or a part of the amount remaining unpaid on any share or shares held by him, either in discharge of the amount of a call payable in respect of any other share or shares held by him or without any call having been made;
- (c) pay dividends in proportions to the amount paid up on each share in cases where a larger amount is paid up on some shares than on others.

**57.** Every share in any company shall be deemed and taken to have been issued and to be held subject to the payment of the whole amount thereof in cash, unless the same shall have been otherwise determined by a contract duly made in writing and filed with the Registrar at or before the issue of such shares.

Manner in which shares are to be issued and held.

**58.—(1)** A company may, if authorized by its articles, pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for shares in the company or procuring or agreeing to procure subscriptions, whether absolute or conditional, for shares in the company, but no such commission shall exceed twenty-five per cent of the amount of the subscription.

Commission on sale of shares.

(2) Except as provided in subsection (1), a company shall not apply any of its shares or capital, either directly or indirectly, in payment of any commission, discount or allowance to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for shares of the company or procuring or agreeing to procure subscriptions, whether absolute or conditional, for shares of the company, whether the shares or capital is so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or is paid out of the nominal purchase money or contract price or otherwise.

#### FILING OF CONTRACTS.

**59.—(1)** Whenever any shares in the capital of any company, credited as fully or partly paid up, shall have been or may be issued for a consideration other than cash, and at or before the

Remedy for omission to file contracts with Registrar.

issue of such shares no contract or no sufficient contract is filed with the Registrar, the company, or any person interested in such shares or any of them, may apply to the Court for relief, and the Court, if satisfied that the omission to file a contract or sufficient contract was accidental or due to inadvertence, or that for any reason it is just and equitable to grant relief, may make an order for the filing with the Registrar of a sufficient contract in writing, and directing that on such contract being filed within a specified period it shall, in relation to such shares, operate as if it had been duly filed with the Registrar aforesaid before the issue of such shares.

(2) Any such application may be made in the manner in which an application to rectify the register of members may be made under Section 46 of this Act, and either before or after an order has been made, or an effective resolution has been passed for the winding up of such company, and either before or after the commencement of any proceedings for enforcing the liability on such shares consequent on the omission aforesaid, and any such application shall, if not made by the company, be served on the company.

(3) Any such order may be made on such terms and conditions as the Court may think fit, and the Court may make such order as to costs as it deems proper, and may direct that an office copy of the order shall be filed with the Registrar, and the order shall in all respects have full effect.

(4) Where the Court in any such case is satisfied that the filing of the requisite contract would cause delay or inconvenience, or is impracticable, it may in lieu thereof, direct the filing of a memorandum in writing, in a form approved by the Court, specifying the consideration for which the shares were issued, and may direct that on such memorandum being filed within a specified period, it shall in relation to such shares operate as if it were a sufficient contract in writing, and had been duly filed with the Registrar before the issue of such shares.

Jurisdiction of  
Court.

**60.** The jurisdiction in Section 59 given to the Court is not by implication to curtail or derogate from its jurisdiction to grant relief in any such case under Section 46 or otherwise.

## TRANSFER OF SHARES.

**61.** A company shall on the application of the transferor of any share or interest in the company, enter in its register of members the name of the transferee of such shares or interest, in the same manner and subject to the same conditions as if the application for such entry were made by the transferee.

Transfer may be registered at request of transferor.

## SHARE-WARRANT.

**62.** In the case of a company limited by shares, the company, if authorized so to do by its regulations as originally framed, or as altered by special resolution, and subject to the provisions of such regulations, may, with respect to any share, which is fully paid up, or with respect to stock, issue under their common seal a warrant stating that the bearer of the warrant is entitled to the share or shares or stock therein specified, and may provide by coupons or otherwise for the payment of the future dividends on the share or shares or stock included in such warrant, hereinafter referred to as a share-warrant.

Warrant of limited shares fully paid up may be issued in the name of bearer.

**63.** A share-warrant shall entitle the bearer to such warrant to the shares or stock specified in it, and such shares or stock may be transferred by the delivery of the share-warrant.

Effect of share-warrant.

**64.** The bearer of a share-warrant shall, subject to the regulations of the company, be entitled, on surrendering such warrant for cancellation, to have his name entered as a member in the register of members, and the company shall be responsible for any loss incurred by any person by reason of the company entering in its register of members the name of any bearer of a share-warrant in respect of the shares or stock specified therein, without the share-warrant being surrendered and cancelled.

Re-registration of bearer of a share-warrant in the register.

**65.** The bearer of a share-warrant may, if the regulations of the company so provide, be deemed to be a member of the company within the meaning of this Act, either to the full extent or for such purposes as may be prescribed by the regulations: Provided that the bearer of a share-warrant shall not be qualified in respect of the shares, or stock specified in such warrant for being a director or manager of the company in cases where such a qualification is prescribed by the regulations of the company.

Regulation of the Company may make the bearer of a share-warrant a member.

Entries in register where share-warrant issued.

**66.** On the issue of a share-warrant, in respect of any share or stock, the company shall strike out of its register of members the name of the member then entered therein as holding such share or stock as if he had ceased to be a member, and shall enter in the register the following particulars

- (a) the fact of the issue of the warrant;
- (b) a statement of the shares or stock included in the warrant, distinguishing each share by its number;
- (c) the date of the issue of the warrant:

And, until the warrant is surrendered, the above particulars shall be deemed to be the particulars which are required by Section 34 of this Act to be entered in the register of members of a company; and, on the surrender of a warrant, the date of such surrender shall be entered as if it were the date at which a person ceased to be a member.

Particulars to be contained in annual summary.

**67.** After the issue by the company of a share-warrant the annual summary required by Section 37 of this Act shall contain the following particulars: The total amount of shares or stock for which share-warrants are outstanding at the date of the summary, and the total amount of share-warrants which have been issued and surrendered respectively since the last summary was made, and the number of shares or amount of stock comprised in each warrant.

### PART III.

#### *Management and Administration of Companies and Associations under this Act.*

##### PROTECTION OF CREDITORS.

Registered office of company.

**68.** Every company shall have a registered office to which all communications and notices may be addressed. If any company carries on business without having such an office, it shall incur a penalty not exceeding twenty-five dollars for every day during which business is so carried on.

**69.** Notice of the situation of such registered office, and of any change therein, shall be given to the Registrar, and recorded by him. Until such notice is given the company shall not be deemed to have complied with the provisions of this Act with respect to having a registered office.

Notice of situation of registered office.

**70.**—(1) Subject to subsection (3), every limited company, whether limited by shares or by guarantee, shall paint or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the company is carried on, in a conspicuous position, in letters easily legible, and shall have its name engraven in legible characters on its seal, and shall have its name mentioned in legible characters in all notices, advertisements, and other official publications of such company, and in all bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of such company, and in all bills of parcels, invoices, receipts, and letters of credit to the company.

Publication of name by a limited company.

(2) Notwithstanding subsection (1), a company may use a seal on which its name has been written or printed other than by engraving for a period of not more than three months from the date of the registration of its memorandum of association.

Temporary seal.

(3) For the purposes of subsections (1) and (2), a limited company may substitute the contraction "Ltd." for the word "Limited" as part of its name.

Use of contraction "Ltd."

**71.** If any limited company does not paint or affix, and keep painted or affixed, its name in manner directed by this Act, it shall be liable to a penalty not exceeding twenty-five dollars for not so painting or affixing its name, and for every day during which such name is not so kept painted or affixed, and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall be liable to the like penalty; and if any director, manager, or officer of such company, or any person on its behalf, uses or authorizes the use of any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid, or issues or authorizes the issue of any notice, advertisement, or other official publication of such company, or signs or authorizes to be signed on behalf of such company any bill of exchange, promissory note, endorsement,

Penalties on non-publication of name.

cheque, order for money or goods, or issues or authorizes to be issued any bill of parcels, invoice, receipt or letter of credit of the company, wherein its name is not mentioned in manner aforesaid, he shall be liable to a penalty of two hundred and fifty dollars, and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods, for the amount thereof, unless the same is duly paid by the company.

Register of mortgages.

**72.** Every limited company shall keep a register of all mortgages and charges specially affecting property of the company, and shall enter in such register in respect of each mortgage or charge a short description of the property mortgaged or charged, the amount of charge created, and the names of the mortgagees or persons entitled to such charge. If any property of the company is mortgaged or charged without such entry as aforesaid being made, every director, manager, or other officer of the company who knowingly and wilfully authorizes or permits the omission of such entry shall incur a penalty not exceeding two hundred and fifty dollars. The register of mortgages required by this section shall be open to inspection by any creditor or member of the company at all reasonable times; and if such inspection is refused, any officer of the company refusing the same, and every director and manager of the company authorizing or knowingly and wilfully permitting such refusal, shall incur a penalty not exceeding twenty-five dollars, and a further penalty not exceeding ten dollars for every day during which such refusal continues; and in addition to the above penalty, any judge sitting in chambers may, by order, compel an immediate inspection of the register.

Registration of mortgages and charges.

**73.—(1)** Every mortgage or charge created by a company after the commencement of this Act and being either

- (a) a mortgage or charge for the purpose of securing any issue of debentures;
- (b) a mortgage or charge on uncalled capital of the company;

- (c) a mortgage or charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale; or
- (d) a floating charge on the undertaking or property of the company,

shall, so far as any security on the company's property or undertaking is thereby conferred, be void against the liquidator and any creditor of the company, unless filed with the Registrar for registration in manner required by this Act within twenty-one days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured.

(2) Where the mortgage or charge comprises property outside the province, it shall, so far as that property is concerned, be sufficient compliance with the requirements of this section, if a deed purporting to specifically charge such property be registered, notwithstanding that further proceedings may be necessary to make such mortgage or charge valid or effectual according to the law of the country in which such property is situate.

(3) The Registrar shall keep, with respect to each company, a register in such form as shall be approved by the Attorney General of all such mortgages and charges created by the company, and requiring registration under this section, and shall, on payment of the appropriate fee prescribed in Table B enter in the register, with respect to every such mortgage or charge, the date of creation, the amount secured by it, short particulars of the property mortgaged or charged, and the names of the mortgagees or persons entitled to the charge.

(4) Provided that, where a series of debentures containing any charge to the benefit of which the debenture holders of that series are entitled *pari passu*, is created by a company, it shall be sufficient to enter on the register

- (a) the total amount secured by the whole series;

- (b) the dates of the resolutions creating the series, and of the covering deed, if any, by which the security is created and defined;
- (c) a general description of the property charged; and
- (d) the names of the trustees, if any, for the debenture holders.

(5) Where more than one issue is made of debentures in the same series, the company may require the Registrar to enter on the register the date and amount of any particular issue; but an omission to do this shall not affect the validity of the debentures issued.

(6) The Registrar shall give a certificate under his seal of the registration of any mortgage or charge registered pursuant to this section, stating the amount thereby secured and the name of the mortgagee or other person entitled to the charge, and the certificate is conclusive proof that the requirements of this section as to registration have been complied with.

(7) It shall be the duty of the company to register every mortgage or charge created by the company and requiring registration under this section, and for that purpose to supply the Registrar with the particulars required for registration; but any such mortgage or charge may be registered on the application of any person interested therein.

(8) The register kept in pursuance of this section of the mortgages and charges of each company shall be open to inspection by any person on payment of the prescribed fee, not exceeding twenty-five cents for each inspection.

(9) Every company shall cause a copy of every instrument creating any mortgage or charge requiring registration under this section to be kept at the registered office of the company, and to be open to inspection by the members and creditors of the company on payment of such fee, not exceeding fifty cents for each inspection, as may be fixed by the regulations of the company: Provided that in the case of a series of uniform debentures a copy of one such debenture shall be sufficient.

(10) Subject to subsection (11), this section does not apply to an instrument which is registered in the Registry of Deeds under The Registration of Deeds Act or The Bills of Sale Act.

(11) Where an instrument to which this section refers is registered in the Registry of Deeds under The Registration of Deeds Act or The Bills of Sale Act, notice of the registration shall, at the time of registration, be filed with the Registrar of Companies setting forth such information as will identify the instrument in the Registry of Deeds.

**74.** A judge of the Supreme Court on being satisfied that the omission to register a mortgage or charge within the time required by this Act, or the omission or misstatement of any particular with respect to any such mortgage or charge, was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested, and on such terms and conditions as seem to the judge just and expedient, order that the time for registration be extended, or, as the case may be, that the omission or misstatement be rectified.

Judge may extend time for registration.

**75.** The Registrar may, on evidence being given to his satisfaction that the debt for which any registered mortgage or charge was given has been paid or satisfied, order that a memorandum of satisfaction be entered on the register, and shall, if required, furnish the company with a copy thereof.

Registrar to enter memorandum of satisfaction.

**76.** The Registrar shall keep a chronological index in the prescribed form and with the prescribed particulars to the mortgages or charges registered under this Act.

Registrar to keep index.

**77.** If any company makes default in complying with the requirements of this Act, as to registration of any mortgage or charge created by the company, the company and every director, manager, and other officer of the company, who knowingly and wilfully authorized or permitted such default shall, without prejudice to any other liability, be liable on summary conviction to a fine not exceeding one hundred dollars; and if any person knowingly and wilfully authorizes and permits the delivery of

Penalty for default by company in registering charges.

any debenture or certificate of debenture stock required by this Act to be registered without a copy of the certificate of the Registrar being endorsed upon it, he shall, without prejudice to any other liability, be liable on summary conviction to a fine not exceeding one hundred dollars.

List of directors to be sent to Registrar.

**78.**—(1) Every company not having a capital divided in shares shall keep at its registered office a register containing the names and addresses and occupations of its directors and managers and shall, not later than the thirty-first day of March in each year after the date of its registration, forward to the Registrar a copy of such register accompanied by the fee specified for the registration of such copy of such register in the Table marked C in the First Schedule hereto.

Registration of copy of register.

(2) The Registrar shall retain and register the copy of the register referred to in subsection (1) on receipt of the same and of the fee specified for the registration thereof in the Table marked C in the First Schedule hereto.

Exemption.

(3) An association registered with limited liability under subsection (1) of Section 253 is exempt from the payment of the fee referred to in subsection (1) and the Registrar shall register the copy of the register of such association forwarded to him pursuant to subsection (1) free of charge.

Offence and penalty for company.

(4) Every company not having a capital divided into shares which fails to comply with or otherwise contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine of not less than twenty-five dollars and each day's continuance of such failure or contravention constitutes a separate offence.

Offence and penalty for directors, etc.

(5) Every director, officer or manager of a company not having a capital divided into shares, who authorizes or knowingly permits that company to fail to comply with or otherwise contravene subsection (1) is guilty of an offence and is liable on summary conviction to a fine of not less than fifty dollars and in default of payment to imprisonment for a term not exceeding three months.

**79.** If any company not having a capital divided into shares, makes default in keeping a register of its directors and managers or in sending a copy of such register to the Registrar in compliance with the foregoing rules, or in notifying to the Registrar any change that takes place in such directors or managers, such delinquent company shall incur a penalty not exceeding twenty-five dollars for every day during which such default continues, and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

Penalty on company not keeping register of directors.

**80.** A promissory note or bill of exchange shall be deemed to have been made, accepted or endorsed on behalf of any company if made, accepted or endorsed in the name of the company by any person acting under the authority of the company, or if made, accepted or endorsed by or on behalf or on account of the company by any person acting under the authority of the company.

Promissory notes and bills of exchange.

**81.** Contracts on behalf of any company may be made as follows, that is to say,

Contracts; how made.

- (a) any contract which if made between private persons would be by law required to be in writing, under seal, may be made on behalf of the company in writing under the common seal of the company, and such contract may be in the same manner varied or discharged;
- (b) any contract which if made between private persons would be by law required to be in writing, and signed by the parties to be charged therewith, may be made on behalf of the company in writing, signed by any person acting under the express or implied authority of the company, and such contract may in the same manner be varied or discharged;
- (c) any contract which if made between private persons would by law be valid, although made by parol only and not reduced into writing, may be made by parol on behalf of the company by any person acting under the express or implied authority of the company, and such contract may in the same way be varied or discharged,

and all contracts made according to the provisions herein contained shall be effectual in law, and shall be binding upon the company and their successors and all other parties thereto, their executors or administrators, as the case may be.

Prohibition  
against carrying  
on business  
with less than  
three members.

**82.** If any company carries on business when the number of its members is less than three for a period of six months after the number has been so reduced, every person who is a member of such company during the time that it so carries on business after such period of six months, and is cognizant of the fact that it is so carrying on business with fewer than three members, shall be severally liable for the payment of the whole debts of the company contracted during such time, and may be sued for the same without the joinder in the action or suit of any other member.

#### MEETINGS.

General  
meeting of  
company.

**83.** A general meeting of every company shall be held once at least in every year.

Company to  
hold meeting  
within four  
months after  
registration.

**84.** Every company shall hold a general meeting within four months after its memorandum of association is registered; and if such meeting is not held the company shall be liable to a penalty not exceeding twenty-five dollars a day for every day after the expiration of such four months until the meeting is held; and every director or manager of the company, and every subscriber of the memorandum of association, who knowingly authorizes or permits such default shall be liable to the same penalty.

#### ALTERATIONS OF MEMORANDUM.

Power of  
company to  
alter  
memorandum  
of association.

**85.** Any company limited by shares may so far modify the conditions contained in its memorandum of association, if authorized to do so by its regulations as originally framed, or as altered by special resolution in manner hereinafter mentioned, as to increase its capital by the issue of new shares of such amount as it thinks expedient, or to consolidate and divide its capital into shares of larger amount than its existing shares, or to convert its paid-up shares into stock, but save as aforesaid, and save as is

hereinafter provided, no alteration shall be made by any company in the conditions contained in its memorandum of association.

**86.** Any company limited by shares may, by special resolution, so far modify the conditions contained in its memorandum of association, if authorized so to do by its regulations as originally framed or as altered by special resolution, as to reduce its capital, but no such resolution for reducing the capital of any company shall come into operation until an order of the Court is registered by the Registrar as is hereinafter mentioned.

Power to company to reduce capital.

**87.** The word "capital" in Part III of this Act shall include paid-up capital; and the power to reduce capital conferred by this Act shall include a power to cancel any lost capital, or any capital unrepresented by available assets, or to pay off any capital which may be in excess of the wants of the company; and paid-up capital may be reduced either with or without extinguishing or reducing the liability (if any) remaining on the shares of the company, and to the extent to which such liability is not extinguished or reduced, it shall be deemed to be preserved notwithstanding anything in this Act to the contrary.

Construction of "capital" and powers to reduce capital.

**88.** The company shall after the date of the passing of any special resolution for reducing its capital, and subject to the qualification hereinafter contained, add to its name, until such date as the court may fix, the words "and reduced", as the last words in its name, and those words shall, until such date, be deemed to be part of the name of the company, within the meaning of this Act.

Company to add "and reduced" to its name for a limited period.

**89.** A company which has passed a special resolution reducing its capital, may apply to the Court by petition for an order confirming the reduction, and on the hearing of the petition, the Court is satisfied that with respect to every creditor of the company who under the provisions of this Act is entitled to object to the reduction, either his consent to the reduction has been obtained, or his debt or claim has been discharged or has determined, or has been secured as hereinafter provided, may make an order confirming the reduction on such terms and subject to such conditions as it deems fit.

Company to apply to the Court for an order confirming reduction.

Creditors may object to reduction, and list of objecting creditors to be settled by Court.

**90.** Where a company proposes to reduce its capital every creditor of the company who at the date fixed by the Court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the proposed reduction and to be entered in the list of creditors who are so entitled to object, subject to the qualification hereinafter contained. The Court shall settle a list of such creditors, and for that purpose shall ascertain as far as possible without requiring an application from any creditor the names of such creditors and the nature and amount of their debts or claims, and may publish notices fixing a certain day or days within which creditors of the company who are not entered on the list are to claim to be so entered or to be excluded from the right of objecting to the proposed reduction.

Court may dispense with consent of creditor on security being given for his debt.

**91.** Where a creditor whose name is entered on the list of creditors, and whose debt or claim is not discharged or determined, does not consent to the proposed reduction, the Court may (if it thinks fit) dispense with such consent, on the company securing the payment of the debt or claim of such creditor by setting apart and appropriating in such manner as the Court may direct, a sum of such amount as is hereinafter mentioned, that is to say,

- (a) if the full amount of the debt or claim of the creditor is admitted by the company, or, though not admitted, is such as the company are willing to set apart and appropriate, then the full amount of the debt or claim shall be set apart and appropriated;
- (b) if the full amount of the debt or claim of the creditor is not admitted by the company, and is not such as the company are willing to set apart and appropriate, or if the amount is contingent or not ascertained, then the Court may, if it thinks fit, inquire into and adjudicate upon the validity of such debt or claim, and the amount for which the company may be liable in respect thereof, in the same manner as if the company were being wound up by the Court, and the amount fixed by the Court on such inquiry and adjudication shall be set apart and appropriated.

**92.** Where a proposed reduction of share capital involves either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, the Court may, if, having regard to any special circumstances of the case, it thinks proper so to do, direct that Sections 90 and 91 shall not apply as regards any class of creditors.

Court may direct Sections 90 and 91 not to apply in certain cases.

**93.—(1)** Where the reduction of the capital of a company does not involve either the diminution of any liability in respect of unpaid capital or the payment to any shareholder of any paid-up capital,

Creditors not entitled to object to reduction in certain cases.

- (a) the creditors of the company shall not, unless the Court otherwise directs, be entitled to object or required to consent to the reduction; and
- (b) it shall not be necessary before the presentation of the petition for confirming the reduction to add, and the Court may, if it thinks it expedient so to do, dispense altogether with the addition of the words “and reduced” as mentioned in Section 88 of this Act.

(2) In any case in which the Court thinks fit so to do, it may require the company to publish in such manner as it thinks fit the reasons for the reduction of its capital or such other information in regard to the reduction of its capital as the Court may think expedient with a view to giving proper information to the public in relation to the reduction of its capital by a company, and, if the Court thinks fit, the causes which led to such reduction.

**94.** The Registrar, upon the production to him of an order of the Court confirming the reduction of the capital of a company, and the delivery to him of a copy of the order and of a minute (approved by the Court) showing with respect to the capital of the company, as altered by the order, the amount of such capital, the number of shares into which it is to be divided, the amount of each share, and the amount (if any) which at the date of the registration of the minute, it is proposed shall be deemed to have been paid up on each share, shall register the order and minute, and on the registration thereof, the special resolution confirmed by the order so registered shall take effect.

Order and minute to be registered.

Notice of such registration shall be published in such manner as the Court may direct. The Registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requisitions of this Act with respect to the reduction of capital have been complied with, and that the capital of the company is such as is stated in the minute.

Minute to form part of memorandum of association.

**95.** The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum of association of the company, and shall be of the same validity and subject to the same alterations as if it had been originally contained in the memorandum of association; and subject as in this Act mentioned, no member of the company, whether past or present, shall be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount which has been paid on such share and the amount of the share as fixed by the minute.

Saving of rights of creditors who are ignorant of proceedings.

**96.** If any creditor who is entitled in respect of any debt or claim to object to the reduction of the capital of a company under this Act is, in consequence of his ignorance of the proceedings taken with a view to such reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and after such reduction, the company is unable, within the meaning of Section 139 to pay to the creditors the amount of such debt or claim, every person who was a member of the company, at the date of registration of the order and minute relating to the reduction of the capital of the company, shall be liable to contribute for the payment of such debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day prior to such registration; and on the company being wound up, the Court, on the application of such creditor, and on proof that he was ignorant of the proceedings taken with a view to the reduction, or of their nature and effect with respect to his claim, may, if it thinks fit, settle a list of such contributories accordingly, and make and enforce calls and orders on the contributories settled on such list in the same manner, in all respects as if they were ordinary contributories in a winding up; but the provisions of this section shall not affect the rights of the contributories of the company among themselves.

**97.** A minute when registered shall be embodied in every copy of the memorandum of association issued after its registration; and if any company makes default in complying with the provisions of this section it shall incur a penalty not exceeding five dollars for each copy in respect of which such default is made, and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

Copy of registered minute.

**98.** If any director, manager or officer of the company wilfully conceals the name of any creditor of the company who is entitled to object to the proposed reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor of the company or if any director or manager of the company aids or abets or is privy to any such concealment or misrepresentation as aforesaid, every such director, manager, or officer shall be guilty of a misdemeanor.

Penalty on concealment of name of creditor.

**99.** Any company limited by shares may by special resolution so far modify the conditions contained in its memorandum of association, if authorized so to do by its regulations as originally framed or as altered by special resolution, as by sub-division of its existing shares or any of them, to divide its capital or any part thereof into shares of smaller amount than is fixed by its memorandum of association: Provided that in the sub-division of the existing shares, the proportion between the amount which is paid and the amount (if any) which is unpaid on each share of reduced amount shall be the same as it was in the case of the existing share or shares, from which the share of reduced amount is derived.

Shares may be divided into shares of smaller amount.

**100.** The statement of the number and amount of the shares into which the capital of the company is divided, contained in every copy of the memorandum of association issued after the passing of any such special resolution, shall be in accordance with such resolution; and any company which makes default in complying with the provisions of this section shall incur a penalty not exceeding five dollars for each copy in respect of which such default is made; and every director and manager of the company who knowingly or wilfully authorizes or permits such default shall incur the like penalty.

Special resolution to be embodied in memorandum of association.

Power to reduce capital by the cancellation of unissued shares.

**101.** Any company limited by shares may so far modify the conditions contained in its memorandum of association, if authorized to do so by its regulations as originally framed or as altered by special resolution, as to reduce its capital by cancelling any shares which, at the date of the passing of such resolution, have not been taken or agreed to be taken by any person; and the provisions of Part III of this Act shall not apply to any reduction of capital made in pursuance of this section.

Accumulated profits may be returned to shareholders in reduction of paid-up capital.

**102.** When any company has accumulated a sum of undivided profits, which, with the consent of the shareholders, may be distributed among the shareholders in the form of a dividend or bonus, it shall be lawful for the company by special resolution to return the same or any part thereof to the shareholders in reduction of the paid-up capital of the company, the unpaid capital being thereby increased by a similar amount. The powers vested in the directors of making calls upon the shareholders in respect of moneys unpaid upon their shares shall extend to the amount of the unpaid capital as augmented by such reduction.

No resolution to take effect until particulars have been registered.

**103.** No such special resolution as aforesaid shall take effect until a memorandum, showing the particulars required by law in the case of a reduction of capital by order of the Court, shall have been produced to and registered by the Registrar.

Power to any shareholder to require company to retain moneys paid upon shares held by such person.

**104.** Upon any reduction of paid-up capital made in pursuance of this Act, it shall be lawful for any shareholder or for any one or more of several joint shareholders, within one month after the passing of the special resolution for such reduction, to require the company to retain, and the company shall retain accordingly, the whole of the moneys actually paid upon the shares held by such person, either alone or jointly with any other person or persons, and which, in consequence of such reduction, would otherwise be returned to him or them, and thereupon the shares in respect of which the said moneys shall be so retained, shall, in regard to the payment of dividends thereon, be deemed to be paid up to the same extent only as the shares on which payment as aforesaid has been accepted by the shareholders in reduction of their paid-up capital, and the company shall invest and keep invested the moneys so retained in such securities authorized for investment by trustees as the company shall determine, and upon the money so invested, or upon so much thereof

as from time to time exceeds the amount of calls subsequently made upon the shares in respect of which such moneys shall have been retained, the company shall pay such interest as shall be received by them from time to time on such securities, and the amount so retained and invested shall be held to represent the future calls which may be made to replace the capital so reduced on those shares, whether the amount obtained on sale of the whole or such proportion thereof as represents the amount of any call when made, produces more or less than the amount of such call.

**105.** From and after such reduction of capital the company shall specify in the annual lists of members, to be made by them in pursuance of Section 37, the amounts which any of the shareholders of the company shall have required the company to retain, and the company shall have retained accordingly, in pursuance of the preceding section of this Act, and the company shall also specify in the statements of account laid before any general meeting of the company, the amount of the undivided profits of the company which shall have been returned to the shareholders in reduction of the paid-up capital of the company under this Act.

Company to specify amounts retained and profits returned.

**106.**—(1) Subject to the provisions of this Act, a company may, by special resolution, alter the provisions of its memorandum of association with respect to the objects of the company so far as may be required for any of the purposes hereinafter specified, but in no case shall any such alteration take effect until confirmed on petition by the Court.

Power of company to alter objects of company subject to confirmation by the Court.

(2) Before confirming any such alteration the Court must be satisfied

- (a) that sufficient notice has been given to every holder of debentures or debenture stock of the company, and any persons or class of persons whose interests will, in the opinion of the Court, be affected by the alteration; and
- (b) that with respect to every creditor who in the opinion of the Court is entitled to object, and who signifies his objection in manner directed by the Court, either his consent to the alteration has been obtained or his debt

or claim has been discharged or has determined, or has been secured to the satisfaction of the Court:

Provided that the Court may in the case of any person or class of persons, for special reasons, dispense with the notice required by this section.

(3) An order confirming any such alteration may be made on such terms and subject to such conditions as to the Court seems fit, and the Court may make such orders as to costs as it deems proper.

(4) The Court shall, in exercising its discretion under this Act have regard to the rights and interests of the members of the company, or of any class of those members, as well as to the rights and interests of the creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interests of dissenting members; and the Court may give such directions and make such orders as it may think expedient for the purpose of facilitating any such arrangement or carrying the same into effect: Provided always that it shall not be lawful to expend any part of the capital of the company in any such purchase.

(5) The Court may confirm, either wholly or in part, any such alteration as aforesaid with respect to the objects of the company if it appears that the alteration is required in order to enable the company

- (a) to carry on its business more economically or more efficiently;
  - (b) to attain its main purpose by new or improved means;
  - (c) to enlarge or change the local area of its operations;
  - (d) to carry on some business or businesses which, under existing circumstances, may conveniently or advantageously be combined with the business of the company;
- or

- (e) to restrict or abandon any of the objects specified in the memorandum of association.

**107.**—(1) Where a company has altered the provisions of its memorandum of association with respect to the objects of the company, and such alteration has been confirmed by the Court, an office copy of the order confirming such alterations together with a copy of the memorandum of association, shall be delivered by the company to the Registrar within fifteen days from the date of the order, and the Registrar shall register the same, and shall certify under his hand the registration thereof, and his certificate shall be conclusive evidence that all the requisitions of this Act with respect to such alteration and the confirmation thereof have been complied with, and thenceforth (but subject to the provisions of this Act) the memorandum so altered shall be the memorandum of association of the company.

Registration of order together with memorandum as altered and consequence thereof.

(2) If a company makes default in delivering to the Registrar any document required by this section to be delivered to him the company shall be liable to a penalty not exceeding fifty dollars for every day during which it is in default.

**108.**—(1) Any company may, by special resolution and with the approval in writing of the Attorney General, change its name, and upon such change being made the Registrar shall enter the new name on the register in the place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case, but no such alteration of name shall affect any rights or obligations of the company, or render defective any legal proceedings instituted or to be instituted by or against the company, and any legal proceedings may be continued or commenced against the company by its new name that might have been continued or commenced against the company by its former name.

Power of company to change name.

(2) Every approval in writing given by the Attorney General shall be delivered to the Registrar who shall retain and register it at the company's expense.

Written approval of Minister to be registered.

**109.** Any limited company may by special resolution, if authorized so to do by its regulations as originally framed or as altered by special resolution, from time to time modify the conditions contained in its memorandum of association so far as to render unlimited the liability of its directors or managers, or of

Limited company may, by special resolution, make liability of directors unlimited.

the managing director; and such special resolution shall be of the same validity as if it had been originally contained in the memorandum of association, and a copy thereof shall be embodied in or annexed to every copy of the memorandum of association which is issued after the passing of the resolution, and any default in this respect shall be deemed to be a default in complying with the provisions of Section 114 and shall be punished accordingly.

#### ALTERATION OF ARTICLES.

Power to alter regulations by special resolution.

**110.** Subject to the provisions of this Act and to the conditions contained in the memorandum and articles of association, any company may in general meeting from time to time, by passing a special resolution in manner hereinafter mentioned, alter all or any of the regulations of the company contained in the articles of association or in the Table marked A in the first Schedule, where such Table is applicable to the company, or make new regulations to the exclusion of or in addition to all or any of the regulations of the company; and any regulations so made by special resolution shall be deemed to be regulations of the company, of the same validity as if they had been originally contained in the articles of association, and shall be subject in like manner to be altered or modified by any subsequent special resolution.

Definition of "special resolution".

**111.**—(1) "Special resolution" means a resolution passed by at least three-fourths of the votes cast by members of the company who are entitled under its regulations to vote and who vote either by themselves or by proxies, where the regulations of the company permit voting by proxy, at a general meeting of the shareholders of which notice specifying the intention to propose the resolution has been duly given.

(2) For the purposes of subsection (1) a notice of a meeting is deemed to be duly given and the meeting to be duly held when the notice is given and the meeting held in the manner prescribed by the company's regulations.

(3) At any meeting referred to in subsection (1)

- (a) unless a poll is demanded, by one member, or where the articles of the company prescribe a larger number not exceeding five, by that number of persons, a declaration of the chairman that the resolution has been carried is deemed conclusive evidence of that fact, without proof of the number or proportion of the votes recorded in favour of or against the resolution; and
- (b) in computing the majority when a poll is demanded reference shall be had to the number of votes to which each member is entitled by the regulations of the company.

(4) Wherever in this Act a reference is made to an extraordinary resolution, the reference shall be taken as a reference to a special resolution.

**112.** In default of any regulations as to voting every member shall have one vote, and in default of any regulations as to summoning general meetings a meeting shall be held to be duly summoned of which seven days' notice in writing has been served on every member in manner in which notices are required to be served by the Table marked A in the First Schedule hereto, and in default of any regulations as to the persons to summon meetings five members shall be competent to summon the same, and in default of any regulations as to who is to be chairman of such meeting, it shall be competent for any person elected by the members present to preside.

Provision where  
no regulations  
as to meetings.

**113.** A copy of any special resolution that is passed by any company shall be forwarded to the Registrar, and be recorded by him. If such copy is not so forwarded within fifteen days from the date of the passing of the resolution, the company shall incur a penalty not exceeding ten dollars for every day after the expiration of such fifteen days during which such copy is omitted to be forwarded, and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

Registry of  
special  
resolution.

**114.** Where articles of association have been registered, a copy of every special resolution for the time being in force shall

Copies of  
special  
resolution.

be annexed to or embodied in every copy of the articles of association that may be issued after the passing of such resolution. Where no articles of association have been registered, a copy of any special resolution shall be forwarded to any member requesting the same on payment of twenty-five cents, or such less sum as the company may direct. And if any company makes default in complying with the provisions of this section, it shall incur a penalty not exceeding five dollars for each copy in respect of which such default is made; and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

#### EXECUTION OF DEEDS ABROAD.

Execution of  
deeds abroad.

**115.** Any company may, by instrument in writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place not situate in the Province of Newfoundland; and every deed signed by such attorney, on behalf of the company, and under his seal, shall be binding on the company, and have the same effect as if it were under the common seal of the company.

#### INSPECTION.

Examination of  
affairs of  
company by  
inspectors.

**116.** The Court may appoint one or more competent inspectors to examine into the affairs of any company and to report thereon, in such manner as the Court may direct, under the applications following, that is to say,

- (a) in the case of any company that has a capital divided into shares, upon the application of members holding not less than one-fifth part of the whole shares of the company for the time being issued;
- (b) in the case of any company not having a capital divided into shares upon the application of members being in number not less than one-fifth of the whole number

of persons for the time being entered on the register of the company as members.

**117.** The application shall be by petition and shall be supported by such evidence as the Court may require for the purpose of showing that the applicants have good reason for requiring such investigation to be made, and that they are not actuated by malicious motives in instituting the same; the Court may also require the applicants to give security for payment of the costs of the inquiry before appointing any inspector or inspectors.

Application for inspection to be supported by evidence.

**118.** It shall be the duty of all officers and agents of the company to produce for the examination of the inspectors, all books and documents in their custody or power. Any inspector may examine upon oath the officers and agent of the company in relation to its business, and may administer such oath accordingly. If any officer or agent refuses to produce any book or document hereby directed to be produced, or to answer any question relating to the affairs of the company, he shall incur a penalty not exceeding twenty-five dollars in respect of each offence.

Inspection of books.

**119.** Upon the conclusion of the examination the inspectors shall report their opinion to the Court; such report shall be printed or written as the Court directs; a copy shall be forwarded by the Court to the registered office of the company and a further copy shall, at the request of the members upon whose application the inspection was made, be delivered to them or any one or more of them. All expenses of and incidental to any such examination, as aforesaid, shall be defrayed by the members upon whose application the inspectors were appointed, unless the Court shall direct the same to be paid out of the assets of the company.

Result of examination; how dealt with.

**120.** Any company may by special resolution appoint inspectors for the purpose of examining into the affairs of the company. The inspectors so appointed shall have the same powers and perform the same duties as inspectors appointed by the court with this exception, that, instead of making their report to the Court they shall make the same in such manner and to such persons as the company in general meeting directs; and the

Power of company to appoint inspectors.

officers and agents of the company shall incur the same penalties, in case of any refusal to produce any book or document hereby required to be produced to such inspector, or to answer any question, as they would have incurred if such inspector had been appointed by the Court.

Report of inspectors to be evidence.

**121.** A copy of the report of any inspectors appointed under this Act, authenticated by the seal of the company into whose affairs they have made inspection, shall be admissible in any legal proceeding, as evidence of the opinion of the inspectors in relation to any matter contained in such report.

#### NOTICES.

Service of notices on company.

**122.** Any summons, notice, order, or other document required to be served upon the company may be served by leaving the same, or sending it through the post in a pre-paid letter addressed to the company, at their registered office.

Rules as to notices by letter.

**123.** Any document to be served by post on the company shall be posted in such time as to admit of its being delivered in the due course of delivery within the period (if any) prescribed for the service thereof; and in proving service of such document it shall be sufficient to prove that such document was properly directed, and that it was put as a pre-paid letter into the post office.

Authentication of notices of company.

**124.** Any summons, notice, order, or proceeding requiring authentication by the company, may be signed by any director, secretary, or other authorized officer of the company, and need not be under the common seal of the company, and the same may be in writing or in print, or partly in writing and partly in print.

#### LEGAL PROCEEDINGS.

Recovery of penalties.

**125.** All offences under this Act made punishable by any penalty may be prosecuted in a summary manner before a stipendiary magistrate,

**126.** The magistrate imposing any penalty under this Act may direct the whole or any part thereof to be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding of the person upon whose information or at whose suit such penalty has been recovered; and subject to such direction all penalties shall be paid to the Minister of Finance for the use of the province.

Application of penalties.

**127.** Every company shall cause minutes of all resolutions and proceedings of general meetings of the company, and of the directors or managers of the company in cases where there are directors or managers to be duly entered in books to be from time to time provided for the purpose; and any such minute as aforesaid, if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings had, or by the chairman of the next succeeding meeting, shall be received as evidence in all legal proceedings; and until the contrary is proved, every general meeting of the company or meeting of directors or managers in respect of the proceedings of which minutes have been so made shall be deemed to have been duly held and convened, and all resolutions passed thereat or proceedings had, to have been duly passed and had, and all appointments of directors, managers or liquidators shall be deemed to be valid, and all acts done by such directors, managers or liquidators shall be valid, notwithstanding any defect that may afterwards be discovered in their appointments or qualifications.

Evidence of proceedings at meeting.

**128.** Where a limited company is plaintiff in any action or other legal proceeding, any judge having jurisdiction in the matter may, if it appears by any credible testimony that there is reason to believe that if the defendant be successful in his defence the assets of the company will be insufficient to pay his costs, require sufficient security to be given for such costs, and may stay all proceedings until such security is given.

Provisions as to costs in action brought by company.

**129.** In any action brought by the company against any member to recover any call or other moneys due from such member in his character of member, it shall not be necessary to set forth the special matter, but it shall be sufficient to allege that the defendant is a member of the company, and is indebted to the company in respect of a call made or other moneys due, whereby an action or suit has accrued to the company.

Declaration in action against members.

Power for companies to refer matters to arbitration.

**130.**—(1) Any company under this Act may, from time to time, by writing under its common seal, agree to refer and may refer to arbitration any existing or future difference, question or other matter whatsoever in dispute between itself and any other company or person, and the companies parties to the arbitration may delegate to the person or persons to whom the reference is made, power to settle any terms or to determine any matter capable of being lawfully settled or determined by the companies themselves, or by the directors or other managing body of such companies.

(2) The provisions of The Judicature Act, relating to arbitrations, shall be deemed to apply to arbitrations between companies and persons in pursuance of this Act.

Arrangement between company and shareholders.

**131.**—(1) Where a company proposes an arrangement with its shareholders or any class of them affecting the rights of the shareholders or any class of them, the company may apply to the Court for an order that a meeting of the shareholders of the company or of any class of shareholders of the company shall be summoned in such manner as the Court directs.

Sanction of arrangement by Court.

(2) Where the shareholders or class of shareholders, as the case may be, present in person or by proxy at a meeting summoned by an order of the Court made pursuant to subsection (1), agree, by three-fourths of the shares of each class represented and voted, to the arrangement either as proposed or as altered or modified at the meeting, such arrangement may be sanctioned by the Court and, if so sanctioned, such arrangement and any reduction or increase of share capital and any provisions for the allotment or disposition thereof by sale or otherwise as therein set forth shall be binding on the company and the shareholders or class of shareholders, as the case may be.

Notice to shareholders.

(3) Where at a meeting called as hereinbefore provided dissentient votes are cast by shareholders of one or more classes affected, and where, notwithstanding such dissentient votes, the arrangement is agreed upon by the shareholders or each class of shareholders represented as aforesaid, the company shall, unless the Court in its discretion otherwise orders, notify each dis-

senting shareholder in such manner as may be prescribed by the said Court of the time and place when application will be made to the Court for the sanction of the arrangement.

(4) In this section "arrangement" includes a reorganization of the share capital of the company and, without limiting the generality of the foregoing, includes

Definition of "arrangement".

- (a) the consolidation of shares of different classes;
- (b) the reclassification of shares of one class into shares of another class;
- (c) the variation of the preferences, rights, conditions, restrictions, limitations or prohibitions attaching to shares of any class; and
- (d) a reconstruction under which a company transfers or sells, or proposes to transfer or to sell, to another company the whole or a substantial part of its undertaking for a consideration consisting in whole or in part of shares or securities of the other company and in which it proposes to distribute a part of that consideration among its shareholders of any class, or to cease carrying on its undertaking or the part of its undertaking so transferred or sold, or so proposed to be transferred or sold.

(5) Where a company proposing to enter into an arrangement has one or more subsidiaries, any one or more of the subsidiaries may join in the arrangement with the holding company in one scheme.

Subsidiaries may join in arrangement.

(6) The Court shall hear and determine the matter and may approve the arrangement as presented or may approve it subject to compliance with such terms and conditions as it thinks fit, having regard for the rights and interests of dissenting shareholders, if any.

Court to determine matter.

(7) The company shall file the arrangement and the Court order of approval with the Registrar together with proof of com-

Filing with Registrar.

pliance with any terms and conditions that may have been imposed.

Effect of filing.

(8) On receipt of the documents referred to in subsection (7) the Registrar shall confirm the arrangement and issue and keep on file a certificate under his seal of office that he has so done, and on and from the date of confirmation the arrangement is in effect as part of the company's constitution.

No arrangement when company bankrupt.

**132.** No application by a company under Section 131 shall be entertained or continued by the Court while the applicant is bankrupt or insolvent or while any proceedings in respect of the applicant are pending under the *Bankruptcy Act* (Canada), the *Winding-up Act* (Canada) or the *Companies' Creditors Arrangement Act* (Canada).

Court orders.

**133.**—(1) An order by the Court under Section 131 is final and binding on all parties, and if any person fails to perform any act required by the order, the Court may by further order complete any such matter, and the further order has the same effect as if the defaulter had complied with the original order.

(2) Where an order of the Court made under Section 131 does not make adequate provisions for bringing the arrangement into effect, the Court may make such further order as may be necessary for that purpose.

(3) Any such further order shall be filed with the Registrar and has the same effect as the original order.

#### PART IV.

##### *Winding up of Companies and Associations under this Act.*

#### PRELIMINARY.

Meaning of contributory.

**134.** The term "contributory" shall mean every person liable to contribute to the assets of a company in the event of the same being wound up. It shall also, in all proceedings for determining the persons who are to be deemed contributories, and in all proceedings prior to the final determination of such persons, include any person alleged to be a contributory.

**135.** The liability of any person to contribute to the assets of a company, in the event of the same being wound up, shall be deemed to create a debt of the nature of a specialty accruing due from such person at the time when his liability commenced, but payable at the time or respective times when calls are made as hereinafter mentioned for enforcing such liability; and it shall be lawful in the case of the insolvency of any contributory to prove against his estate the estimated value of his liability to future calls, as well as calls already made.

Nature of liability of contributory.

**136.** If any contributory dies, either before or after he has been placed on the list of contributories hereinafter mentioned, his personal representatives shall be liable in a due course of administration to contribute to the assets of the company in discharge of the liability of such deceased contributory and such personal representatives shall be deemed to be contributories accordingly.

Contributories in case of death.

**137.** If any contributory is declared insolvent either before or after he has been placed on the list of contributories, the trustees of his estate shall be deemed to represent such insolvent for all the purposes of the winding up, and shall be deemed to be contributories accordingly, and may be called upon to admit to proof against the estate of such insolvent, or otherwise to allow to be paid out of his assets in due course of law, any moneys due from such insolvent in respect of his liability to contribute to the assets of the company being wound up.

Contributories in case of insolvency.

#### WINDING UP BY COURT.

**138.** A company may be wound up by the Court as hereinafter defined, under the following circumstances, that is to say,

Circumstances under which company may be wound up by Court.

- (a) whenever the company has passed a special resolution requiring the company to be wound up by the Court;
- (b) whenever the company does not commence its business within a year from its incorporation, or suspends its business for the space of a whole year;
- (c) whenever the members are reduced in number to less than three;

- (d) whenever the company is unable to pay its debts;
- (e) whenever the Court is of opinion that it is just and equitable that the company shall be wound up.

Company when deemed unable to pay its debts.

**139.** A company shall be deemed to be unable to pay its debts,

- (a) whenever a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding two hundred and fifty dollars then due, has served on the company, by leaving the same at their registered office, a demand under his hand requiring the company to pay the sum so due, and the company has for the space of three weeks succeeding the service of such demand neglected to pay such sum, or to secure or compound for the same to the reasonable satisfaction of the creditor;
- (b) whenever execution or other process issued on a judgment or order obtained in the Court, in favour of any creditor, in any proceeding instituted by such creditor against the company, is returned unsatisfied in whole or in part;
- (c) whenever it is proved to the satisfaction of the Court that the company is unable to pay its debts.

Application for winding up to be made by petition.

**140.** Any application to the Court for the winding up of a company shall be by petition; it may be presented by the company, or by any one or more creditor or creditors, contributory or contributories of the company, or by all or any of the above parties, together or separately; and every order which may be made on any such petition shall operate in the same manner as if it had been made upon the joint petition of a creditor and a contributory.

Contributory when not qualified to present winding-up petition.

**141.** No contributory of a company under this Act shall be capable of presenting a petition for winding up such company unless the members of the company are reduced in number to less than three, or unless the shares in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held by him, and registered in his name,

for a period of at least six months during the eighteen months previous to the commencement of the winding up, or have devolved upon him through the death of a former holder: Provided that where a share has during the whole or any part of the six months been held by or registered in the name of any trustee or trustees for the contributory, such share shall for the purposes of this section be deemed to have been held by and registered in the name of the contributory.

**142.** A winding up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding up.

Commencement of winding up by Court.

**143.** The Court may at any time after the presentation of a petition for winding up a company under this Act, and before making an order for winding up the company, upon the application of the company, or of any creditor or contributory of the company, restrain further proceedings in any action or proceeding against the company, upon such terms as the Court thinks fit.

Court may grant injunction.

**144.** Upon hearing the petition the Court may dismiss the same with or without costs, may adjourn the hearing conditionally or unconditionally, and may make any interim order, or any order that it deems just.

Course to be pursued by Court on hearing petition.

**145.** When an order has been made for winding up a company no action or other proceeding shall be proceeded with or commenced against the company except with the leave of the Court, and subject to such terms as the Court may impose.

Actions to be stayed after order for winding up.

**146.** When an order has been made for winding up a company a copy of such order shall forthwith be forwarded by the company to the Registrar, who shall make a minute thereof in his books, relating to the company.

Copy of order to be forwarded to Registrar.

**147.** The Court may at any time after an order has been made for winding up a company, upon the application by motion of any creditor or contributory of the company, and upon proof to the satisfaction of the Court that all proceedings in relation

Power of Court to stay proceedings.

to such winding up ought to be stayed, make an order staying the same, either altogether or for a limited time, on such terms and subject to such conditions as it deems fit.

Effect of order on share capital of company limited by guarantee.

**148.** When an order has been made for winding up a company limited by guarantee, and having a capital divided into shares, any share capital that may not have been called up shall be deemed to be assets of the company, and to be a debt of the nature of a specialty due to the company from each member to the extent of any sums that may be unpaid on any shares held by him, and payable at such time as may be appointed by the Court.

Court may have regard to wishes of creditors or contributories.

**149.** The Court may, as to all matters relating to the winding up, have regard to the wishes of the creditors or contributories, as proved to it by any sufficient evidence, and may, if it thinks it expedient, direct meetings of the creditors or contributories to be summoned, held and conducted in such manner as the Court directs, for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court. In the case of creditors, regard is to be had to the value of the debts due to each creditor, and in the case of contributories to the number of votes conferred on each contributory by the regulations of the company.

#### LIQUIDATORS.

Appointment of liquidators.

**150.** For the purpose of conducting the proceedings in winding up a company and assisting the Court therein, there may be appointed a person or persons to be called a liquidator or liquidators; and the Court having jurisdiction may appoint such person or persons either provisionally or otherwise, as it thinks fit, to the office of liquidator or liquidators; in all cases if more persons than one are appointed to the office of liquidator, the Court shall declare whether any act hereby required or authorized to be done by the liquidators is to be done by all or any one or more of such persons.

Resignations removals, filling up vacancies and compensation.

**151.** A liquidator may resign or be removed by the Court on due cause shown. And any vacancy in the office of a liquidator appointed by the Court shall be filled by the Court. There

shall be paid to the liquidator such salary or remuneration, by way of percentage or otherwise, as the Court may direct; and if more liquidators than one are appointed such remuneration shall be distributed amongst them in such proportions as the Court directs.

**152.** The liquidator or liquidators shall be described by the style of the liquidator or liquidators of the particular company in respect of which he is or they are appointed, and not by his or their individual name or names; he or they shall take into his or their custody, or under his or their control, all the property, effects, and things in action to which the company is or appears to be entitled, and shall perform such duties in reference to the winding up of the company as may be imposed by the Court.

Style and duties  
of liquidator

**153.** The liquidator shall have power, with the sanction of the Court,

Powers of  
liquidator.

- (a) to bring or defend any action, suit, or prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the company;
- (b) to carry on the business of the company, so far as may be necessary for the beneficial winding up of the same;
- (c) to sell the real and personal and moveable property, effects and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels;
- (d) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seal;
- (e) to prove, rank, claim and draw a dividend in the matter of the insolvency of any contributory, for any balance against the estate of such contributory, and take and receive dividends in respect of such balance in the matter of such insolvency as a separate debt due from such insolvent, and rateably with the other separate creditors;

- (f) to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company, also to raise upon the security of the assets of the company from time to time any requisite sum or sums of money; and the drawing, accepting, making, or endorsing of every such bill of exchange or promissory note as aforesaid on behalf of the company, shall have the same effect with respect to the liability of such company as if such bill or note had been drawn, accepted, made or endorsed by or on behalf of such company in the course of carrying on the business thereof;
- (g) to take out, if necessary, in his official name, letters of administration to any deceased contributory, and to do in his official name any other act that may be necessary for obtaining payment of any moneys due from a contributory or from his estate, and which act cannot be conveniently done in the name of the company; and in all cases where he takes out letters of administration, or otherwise uses his official name for obtaining payment of any moneys due from a contributory, such money shall for the purpose of enabling him to take out such letters or recover such moneys, be deemed to be due to the liquidator himself;
- (h) to do and execute all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

Discretion of liquidator.

**154.** The Court may provide by any order that the liquidator may exercise any of the above powers without the sanction or intervention of the Court, and where a liquidator is provisionally appointed may limit and restrict his powers by the order appointing him.

#### OFFICIAL RECEIVER.

Provisions as to liquidator.

**155.—(1)** On an order being made by the Court for winding up a company, the officer hereinafter mentioned shall, by virtue of his office, become the provisional liquidator of the company, and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such.

(2) The said officer shall be appointed by the Lieutenant-Governor in Council, and shall for the purpose of his duties under this Act, be styled the official receiver.

(3) When a person other than the official receiver is appointed liquidator of a company he shall not be capable of acting as liquidator until he has notified his appointment to the Registrar and given security in the manner prescribed to the satisfaction of the Court. He shall give the official receiver such information and such access to and facilities for inspecting the books and documents of the company, and generally such aid as may be requisite for enabling that officer to perform his duties under this Act.

(4) If any vacancy occurs in the office of liquidator of a company, the official receiver shall, by virtue of his office, be the liquidator during the vacancy.

(5) The official receiver may be appointed by the Court provisional liquidator of the company at any time after the presentation of the petition and before a winding-up order has been made.

(6) Where an application is made to the Court to appoint a receiver on behalf of the debenture holders or other creditors of a company, the official receiver may be so appointed.

(7) The official receiver shall receive such remuneration by way of percentage or otherwise as may be fixed by the Court.

**156.**—(1) Where the official receiver becomes the liquidator of a company, whether provisionally or otherwise, he may, if satisfied that the nature of the estate or business of the company or the interest of the creditors or contributories generally require the appointment of a special manager of the estate or business of the company other than himself, apply to the Court to, and the Court may, on such application, appoint a special manager thereof during such time as the Court may direct, with such powers, including any of the powers of a receiver or manager as may be entrusted to him by the Court.

Power to  
appoint special  
manager.

(2) The special manager shall give such security and account in such manner as the Court shall direct.

(3) The special manager shall receive such remuneration as may be fixed by the Court.

Meetings of  
creditors.

**157.**—(1) When the Court has made an order for winding up a company the official receiver shall summon separate meetings of the creditors and contributors of the company for the purpose of

- (a) determining whether or not an application is to be made to the Court for appointing a liquidator in the place of the official receiver; and
- (b) determining whether or not an application is to be made to the Court for the appointment of a committee of inspection to act with the liquidator, and who are to be the members of such committee if appointed.

The Court may make any appointment and order required to give effect to any such determination, and if there is a difference between the determinations of the meetings of the creditors and contributories in respect of any of the matters mentioned in the foregoing provisions the Court shall decide the difference and make such order thereon as the Court may think fit.

(2) The provisions of the Third Schedule to this Act shall, subject to such modifications as may be made therein by general rules, apply to any meeting summoned in pursuance of this section.

(3) In case a liquidator is not appointed by the Court, the official receiver shall be the liquidator of the company.

Statement of  
company's  
affairs.

**158.**—(1) Where the Court has made an order for winding up a company, there shall be made out and submitted to the official receiver a statement as to the affairs of the company, in the prescribed form, verified by affidavit, and showing the particulars of the assets, debts, and liabilities of the company, the names, residences and occupations of the creditors of the company, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the official receiver may require.

(2) The statement shall be submitted and verified by one or more of the persons who are at the time of the winding-up order the directors and by the person who is at that time the secretary or other chief officer of the company, or by such of the persons being or having been directors or officers of the company, or having taken part in the formation of the company at any time within one year before the order for winding up the company, as the official receiver, subject to the direction of the Court, may require to submit, and verify the same.

(3) The statement shall be submitted within fourteen days from the date of the order, or within such extended time as the official receiver or the Court may for special reasons appoint.

(4) Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the official receiver, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of such statement and affidavit as the receiver may consider reasonable, subject to an appeal to the Court.

(5) If any person without reasonable excuse, makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding fifty dollars for every day during which the default continues.

(6) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to take a copy thereof or extract therefrom. But any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of Court and shall be punishable accordingly on the application of the liquidator or of the official receiver.

**159.**—(1) Where the Court has made an order for winding up a company, the official receiver shall as soon as practicable after receipt of the statement of the company's affairs, submit a preliminary report to the Court

Report on winding up and proceedings thereupon.

- (a) as to the amount of capital issued, subscribed, and paid up, and the estimated amount of assets and liabilities;
- (b) if the company has failed, as to the causes of the failure; and
- (c) whether in his opinion further enquiry is desirable as to any matters relating to the promotion, formation, or failure of the company, or the conduct of the business thereof.

(2) The official receiver may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was formed, and whether in his opinion any fraud has been committed by any person in the promotion or formation of the company, or by any director or other officer of the company, in relation to the company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the Court.

(3) The Court may, after consideration of any such report, direct that any person who has taken any part in the promotion or formation of a company, or has been a director or officer of the company, shall attend before the Court on a day appointed by the Court for that purpose, and be publicly examined as to the promotion or formation of the company, or as to the conduct of the business of the company, or as to his conduct and dealings as director or officer of the company.

(4) The official receiver shall take part in the examination, and for that purpose may employ a solicitor or counsel.

(5) The liquidator, where the official receiver is not the liquidator, and any creditor or contributory of the company, may also take part in the examination either personally or by solicitor or counsel.

(6) The Court may put such questions to the persons examined as to the Court may seem expedient.

(7) The person examined shall be examined on oath, and it shall be his duty to answer all such questions as the Court may

put or allow to be put to him. The person examined shall at his own cost prior to such examination, be furnished with a copy of the official receiver's report, and shall also at his own cost be entitled to employ at such examination a solicitor or counsel, who shall be at liberty to put such questions to the person examined as the Court may deem just for the purpose of enabling that person to explain or qualify any answers given by him: Provided always, that if such person is, in the opinion of the Court, exculpated from any charges made or suggested against him, the Court may allow him such costs as the Court in its discretion may think fit. Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him. They shall also be open to the inspection of any creditor or contributory of the company at all reasonable times.

(8) The Court may, if it thinks fit, adjourn the examination from time to time.

**160.**—(1) A committee of inspection appointed in pursuance of this Act shall consist of persons being creditors or contributories of the company or persons holding general powers of attorney from such persons in such proportions as may be agreed on by the meetings of creditors and contributories or as, in case of difference, may be determined by the Court.

Committee of  
inspection.

(2) The committee of inspection shall meet at such times as they from time to time appoint, and failing such appointment, at least once a month; and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(3) The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present at the meeting.

(4) Any member of the committee may resign his office by notice in writing signed by him, and delivered to the liquidator.

(5) If a member of the committee becomes insolvent, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of those

members of the committee who together with himself represent the creditors or contributories as the case may be, his office shall thereupon become vacant.

(6) Any member of the committee representing creditors may be removed by an ordinary resolution at any meeting of creditors of which seven days' notice has been given, stating the object of the meeting. Any member of the committee representing contributories may be removed by an ordinary resolution at any meeting of contributories, of which seven days' notice has been given stating the object of the meeting.

(7) On a vacancy occurring in the office of a member of the committee, the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, for the purpose of filling the vacancy, and the meeting may, by resolution, re-appoint the same or appoint another creditor or contributory to fill the vacancy.

(8) The continuing members of the committee, provided there be not less than two such continuing members, may act notwithstanding any vacancy in their body.

(9) If there be no committee of inspection, any act or thing or any direction or permission by this Act authorized or required to be done or given by the committee may be done or given by the Court on the application of the liquidator.

Power of Court  
to assess  
damages against  
delinquent.

**161.**—(1) Where in the course of the winding up of a company it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager, liquidator or other officer of the company, has misapplied or retained or become liable or accountable for any moneys or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of the official receiver, or of the liquidator of the company, or of any creditor or contributory of the company examine into the conduct of such promoter, director, manager, liquidator, or other officer of the company, and compel him to repay any moneys or restore any property so misapplied or retained, or for which he has become liable or accountable, together with interest after such rate as the Court thinks

just, or to contribute such sums of money to the assets of the company by way of compensation in respect of such misapplication, retainer, misfeasance, or breach of trust, as the Court thinks just.

(2) The provisions of this section shall apply in the winding up of any company, whether the same is being wound up by or subject to the supervision of the Court, or is being wound up voluntarily, and whether the winding up commenced before or after the passing of this Act, and notwithstanding that the offence is one for which the offender may be criminally responsible.

**162.**—(1) Every liquidator of a company which is being wound up by an order of the Court, shall, in such manner and at such times as the Court may direct, pay the money received by him into any bank to which the *Bank Act* (Canada) applies to a special account to be opened in the matter of the winding up of the said company.

Payment of  
money into  
chartered bank.

(2) Provided that, if the committee of inspection satisfy the Court that for the purpose of carrying on the business of the company or of obtaining advances, or for any other reason, it is for the advantage of the creditors or contributories that the liquidator shall have an account with any other bank, the Court shall, on the application of the committee of inspection, authorize the liquidator to make his payments into and out of such other bank as the committee may select, and thereupon those payments shall be made in the prescribed manner.

(3) If any such liquidator at any time retains for more than ten days a sum exceeding two hundred and fifty dollars, or such other amount as the Court may in any particular case authorize him to retain, then, unless he explains the retention to the satisfaction of the Court, he shall pay interest on the amount so retained in excess at the rate of twenty dollars per centum per annum, and shall be liable to disallowance of all or such part of his remuneration as to the Court shall deem just, and to be removed from his office by the Court, and shall be liable to pay any expenses occasioned by reason of his default.

(4) No liquidator of a company which is being wound up by order of the Court shall pay any sums received by him as liquidator into his private banking account.

Powers of liquidator.

**163.** The liquidator of a company which is being wound up by order of the Court may, with the sanction either of the Court or of the committee of inspection, employ a solicitor or other agent to take any proceedings or do any business which the liquidator is unable to take or do himself. The sanction aforesaid must be a sanction obtained before the employment, except in cases of urgency, and in such cases it must be shown that no undue delay took place in obtaining the sanction.

Powers of official receiver to apply as to voluntary winding up.

**164.** Where a company is being wound up voluntarily or subject to the supervision of the Court, the official receiver may present a petition that the company be wound up by the Court, and thereupon, if the Court is satisfied that the voluntary winding up or winding up subject to supervision cannot be continued with due regard to the interests of the creditors or contributories, it may make an order that the company be wound up by the Court.

Information as to pending liquidations.

**165.**—(1) If the winding up of a company is not concluded within one year after its commencement, the liquidators of the company shall, at such intervals as may be prescribed, until the winding up is concluded, send to the Registrar a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation. Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to take a copy thereof, or extract therefrom. But any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of Court, and shall be punishable accordingly on the application of the liquidator or of the receiver.

(2) If a liquidator makes default in complying with the requirements of this section he shall be liable to a fine not exceeding two hundred and fifty dollars for each day during which the default continues.

**166.**—(1) Every liquidator of a company which is being wound up by order of the Court shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, send to the Court, or as the Court may direct, an account of his receipts and payments as such liquidator.

Audit of liquidator's accounts.

(2) The account shall be in a prescribed form, shall be made in duplicate, and shall be verified by affidavit.

(3) The Court shall cause the accounts so sent to be audited and for the purpose of the audit the liquidator shall furnish the Court with such vouchers and information as the Court may require, and the Court may at any time require the production of, and inspect any books or accounts kept by the liquidator.

(4) When any such account has been audited, one copy thereof shall be filed with the Court, and each copy shall be open to the inspection of any creditor, or of any person interested.

(5) The Court shall cause the account or a summary thereof when audited, to be printed, and shall send a printed copy thereof by post to every creditor and contributory.

**167.** Every liquidator of a company which is being wound up by order of the Court shall keep, in manner prescribed, proper books in which he shall from time to time cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory of the company may, subject to the control of the Court, personally or by his agent inspect any such books.

Books to be kept by liquidator.

**168.**—(1) When the liquidator of a company which is being wound up by order of the Court has realized all the property of the company, or so much thereof as can, in his opinion, be realized without needlessly protracting the liquidation, and distributed a final dividend, if any, to the creditors, and adjusted the rights of the contributories between themselves, and made a final return, if any, to the contributories, or has resigned, or has been removed from his office, the Court shall, on his application, cause a report on his accounts to be prepared and, on his complying with all the requirements of the Court, shall take into consideration the report, and any objection which may be urged by any

Release of liquidators.

creditor, or contributory, or person interested against the release of the liquidator, and shall either grant or withhold the release accordingly.

(2) Where the release of a liquidator is withheld the Court may, on the application of any creditor, or contributory, or person interested, make such order as it thinks just, charging the liquidator with the consequences of any act or default he may have done or made contrary to his duty.

(3) Any order of the Court releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company, or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(4) Where the liquidator has not previously resigned or been removed, his release shall operate as a removal of him from his office.

Discretionary  
powers of  
liquidator, and  
control thereof.

**169.**—(1) Subject to the provisions of this Act, the liquidator of a company which is being wound up by order of the Court shall, in the administration of the property of the company and in the distribution thereof amongst its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting, or by the committee of inspection, and any directions so given by the creditors or contributories at any general meeting, shall in case of conflict be deemed to override any directions given by the committee of inspection.

(2) The liquidator may from time to time summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories as the case may be.

(3) The liquidator may apply to the Court in manner prescribed in relation to any particular matter arising under the winding up.

(4) Subject to the provisions of this Act, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.

**170.** If any person is aggrieved by any act or decision of the liquidator of a company, which is being wound up by order of the Court, he may apply to the Court, and the Court may confirm, reverse or modify the act or decision complained of, and make such order in the premises as it thinks just.

Appeal to Court  
against  
liquidator.

**171.**—(1) The Court shall take cognizance of the conduct of liquidators of companies which are being wound up by order of the Court, and in the event of any such liquidator not faithfully performing his duties and duly observing all the requirements imposed on him by statute, rules or otherwise with respect to the performance of his duties, or in the event of any complaint being made to the Court by any creditor or contributory in regard thereto, the Court shall inquire into the matter and take such action thereon as may be deemed expedient.

Control of  
Court over  
liquidators.

(2) The Court may at any time examine on oath the liquidator or any other person concerning the winding up.

(3) The Court may also direct a local investigation to be made of the books and vouchers of the liquidator of any company which is being wound up by order of the Court.

#### ORDINARY POWERS OF COURT.

**172.** The powers conferred by this Act upon the Court may, subject to review, as hereinafter provided, be exercised by a single judge thereof; and such powers may be exercised in Chambers either during term or in vacation.

Judge may  
exercise powers  
of Court.

**173.** The winding up of a company or any proceedings therein may, at any time and at any stage, and either with or without application from any of the parties thereto, be transferred from one judge to another judge.

Transfer of  
proceedings  
from one judge  
to another  
judge.

Appeal from  
judge to Court.

**174.** Every judgment, finding or order of a single judge, in Court or in Chambers, or of the Court constituted by two judges, in any proceeding under this Act, shall be respectively subject to be reviewed, varied or set aside by the Court constituted of two or three judges, as the case may be, in the same manner as in other causes and matters under the provisions of The Judicature Act and any amendments thereof.

Collection and  
application of  
assets.

**175.** As soon as may be after making an order for winding up the company, the Court shall settle a list of contributories, with power to rectify the register of members in all cases where such rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected, and applied in discharge of its liability.

Provision as to  
representative  
contributories.

**176.** In settling the list of contributories the Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or being liable to the debts of others.

Power of Court  
to require  
delivery of  
property.

**177.** The Court may, at any time after making an order for winding up a company, require any contributory for the time being settled on the list of contributories, trustee, receiver, banker or agent or officer of the company, to pay, deliver, convey, surrender or transfer forthwith, or within such time as the Court directs, to or into the hands of the liquidator, any sum or balance, books, papers, estate or effects which happen to be in his hands for the time being, and to which the company is *prima facie* entitled.

Power of Court  
to order  
payment of  
debts by  
contributory.

**178.** The Court may at any time after making an order for winding up the company, make an order on any contributory for the time being settled on the list of contributories, directing payment to be made, in manner in the said order mentioned, of any moneys due from him or from the estate of the person whom he represents to the company, exclusive of any money which he or the estate of the person whom he represents may be liable to contribute by virtue of any call made or to be made by the Court in pursuance of this Part of this Act; and it may, in making such order, when the company is not limited, allow to such contributory by way of set-off any moneys due to him or the estate which he represents from the company on any independent deal-

ing or contract with the company, but not any moneys due to him as a member of the company in respect of any dividend or profit: Provided that when all the creditors of any company, whether limited or unlimited, are paid in full, any moneys due on any account whatever to any contributory from the company may be allowed to him by way of set-off against any subsequent call or calls.

**179.** The Court may, at any time after making an order for winding up a company, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on and order payment thereof by all or any of the contributories, for the time being settled on the list of contributories, to the extent of their liability for payment of all or any sums it deems necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves, and it may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same.

Power of Court to make calls.

**180.** The Court may order any contributory, purchaser or other person from whom money is due to the company, to pay the same into any bank to which the *Bank Act* (Canada) applies to the account of the liquidator instead of to the liquidator, and such order may be enforced in the same manner as if it had directed payment to the liquidator.

Power of Court to order payment into bank.

**181.** All moneys, bills, notes, and other securities paid and delivered into any bank to which the *Bank Act* (Canada) applies in the event of a company being wound up by the Court, shall be subject to such order and regulation for the keeping of the account of such moneys and other effects, and for the payment and delivery in, or investment and payment and delivery out of the same as the Court may direct.

Regulation of account with Court.

**182.** If any person made a contributory as personal representative of a deceased contributory makes default in paying any sum ordered to be paid by him, proceedings may be taken for administering the estate of such deceased contributory, and of compelling payment thereof of the moneys due.

Provision in case of representative contributory not paying moneys ordered.

Order  
conclusive  
evidence.

**183.** Any order made by the Court in pursuance of this Act upon any contributory shall, subject to the provisions herein contained for appealing against such order, be conclusive evidence that the moneys, if any, thereby appearing to be due or ordered to be paid are due, and all other pertinent matters stated in such order are to be taken to be truly stated as against all persons, and in all proceedings whatsoever.

Court may  
exclude  
creditors not  
proving within  
certain time.

**184.** The Court may fix a certain day or certain days on or within which creditors of the company are to prove their debts or claims, or to be excluded from the benefit of any distribution made before such debts are proved.

Court to adjust  
rights of  
contributories.

**185.** The Court shall adjust the rights of the contributories amongst themselves, and distribute any surplus that may remain amongst the parties entitled thereto.

Court to order  
costs.

**186.** The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the estate of the company of the costs, charges and expenses incurred in winding up any company in such order of priority as the Court thinks just.

Dissolution of  
company.

**187.** When the affairs of the company have been completely wound up, the Court shall make an order that the company be dissolved from the date of such order, and the company shall be dissolved accordingly.

Registrar to  
make minute of  
dissolution of  
company.

**188.** Any order so made shall be reported by the liquidator to the Registrar, who shall make a minute accordingly in his books of the dissolution of such company.

Penalty on not  
reporting  
dissolution of  
company.

**189.** If the liquidator makes default in reporting to the Registrar, in the case of a company being wound up by the Court, the order that the company be dissolved, he shall be liable to a penalty not exceeding twenty-five dollars for every day during which he is so in default.

#### EXTRAORDINARY POWERS OF COURT.

Power of Court  
to summon  
persons before  
it, suspected of  
having property  
of company.

**190.** The Court may, after it has made an order for winding up the company, summon before it any officer of the company or person known or suspected to have in his possession any of the estate or effects of the company, or supposed to be indebted to the company, or any person whom the Court may deem cap-

able of giving information concerning the trade, dealings, estate or effects of the company; and the Court may require any such officer or person to produce any books, papers, deeds, writings or other documents in his custody or power relating to the company; and if any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, having no lawful impediment (made known to the Court at the time of its sitting, and allowed by it), the Court may cause such person to be apprehended and brought before the Court for examination; nevertheless, in cases where any person claims any lien on papers, deeds, or writings or documents produced by him, such production shall be without prejudice to such lien, and the Court shall have jurisdiction in the winding up to determine all questions relating to such lien.

**191.** The Court may examine upon oath, either by word of mouth or upon written interrogatories, any person appearing or brought before them in manner aforesaid, concerning the affairs, dealings, estate or effects of the company, and may reduce into writing the answers of every such person, and require him to subscribe the same.

Examination of parties by Court.

**192.** The Court may, at any time before or after it has made an order for winding up a company, upon proof being given that there is probable cause for believing that any contributory to such company is about to quit this province, or otherwise abscond, or to remove or conceal any of his goods or chattels, for the purpose of evading payment of calls, or for avoiding examination in respect of the affairs of the company, cause such contributory to be arrested, and his books, papers, moneys, securities for moneys, goods and chattels, to be seized, and him and them to be safely kept until such time as the Court may order.

Power to arrest contributory about to abscond or to remove or conceal any of his property.

**193.** Any powers by this Act conferred on the Court shall be deemed to be in addition to and not in restriction of any other powers subsisting, of instituting proceedings against any contributory, or the estate of any contributory, or against any debtor of the company, for the recovery of any call or other sums due from such contributory or debtor, or his estate, and such proceedings may be instituted accordingly.

Powers of Court cumulative.

Power to enforce orders.

**194.** All orders made by the Court under this Act may be enforced in the same manner in which orders of the Court may be enforced in any other proceeding therein.

Evidence may be taken by commissioners.

**195.** It shall be lawful for the Court or a judge thereof to refer the whole or any part of the examination of any witnesses under this Act to any person whom the Court or judge may appoint as commissioner, although such commissioner is out of the jurisdiction of the Court; and every such commissioner shall have in the matter so referred to him all the same powers of summoning and examining witnesses, and requiring the production or delivery of documents and punishing defaults by witnesses, and allowing costs and charges and expenses to witnesses as is granted to a commissioner in any other proceeding in the Court; and the examination so taken shall be returned or reported to the Court in such manner as it directs; and, subject to the provisions of this section, Order XXXIII, Rules 4 to 25, both inclusive, of The Judicature Act shall apply to the taking of such examinations as fully as if the same were incorporated in this Act.

Provision as to swearing of affidavits, etc.

**196.** Any affidavit, affirmation, or declaration to be sworn or made under the provisions or for the purpose of this Act, shall be sworn or made in the manner provided by Order XXXIV of The Judicature Act.

#### VOLUNTARY WINDING UP OF COMPANIES.

Circumstances under which company may be wound up voluntarily.

**197.** A company under this Act may be wound up voluntarily,

- (a) whenever the period, if any, fixed for the duration of the company by the articles of association expires, or whenever the event, if any, occurs, upon the occurrence of which it is provided by the articles of association that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily;
- (b) whenever the company has passed a special resolution requiring the company to be wound up voluntarily;

- (c) whenever the company has passed an extraordinary resolution to the effect that it has been proved to their satisfaction that the company cannot, by reason of its liabilities, continue its business, and that it is advisable to wind up the same.

**198.** A voluntary winding up shall be deemed to commence at the time of the passing of the resolution authorizing such winding up.

Commencement of voluntary winding up.

**199.** Whenever a company is wound up voluntarily the company shall, from the date of the commencement of such winding up, cease to carry on its business; except in so far as may be required for the beneficial winding up thereof; and all transfers of shares, except transfers made to or with the sanction of the liquidators, or alterations in the status of the members of the company taking place after the commencement of such winding up, shall be void, but its corporate state and all its corporate powers shall, notwithstanding it is otherwise provided by its regulations, continue until the affairs of the company are wound up.

Effects of voluntary winding up on status of company.

**200.** Notice of any special resolution or extraordinary resolution passed for winding up a company voluntarily shall be given by advertisement in *The Newfoundland Gazette*.

Notice of resolution to wind up voluntarily.

**201.** The following consequences shall ensue upon the voluntary winding up of a company

Consequences of voluntary winding up.

- (a) the property of the company shall be applied in satisfaction of its liabilities *pari passu* and, subject thereto, shall, unless it be otherwise provided by the regulations of the company, be distributed amongst the members according to their rights and interests in the company;
- (b) liquidators shall be appointed for the purpose of winding up the affairs of the company and distributing the property;
- (c) the company in general meeting shall appoint such persons or person as it thinks fit to be liquidators or a liquidator, and may fix the remuneration to be paid to them or him;

- (d) if one person only is appointed, all the provisions herein contained in reference to several liquidators shall apply to him;
- (e) upon the appointment of liquidators all the powers of the directors shall cease except in so far as the company in general meeting or the liquidators may sanction the continuance of such power;
- (f) when several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment, or in default of such determination, by any number not less than two;
- (g) the liquidators may, without the sanction of the Court, exercise all powers by this Act given to a liquidator appointed by the Court;
- (h) the liquidators may exercise the powers hereinbefore given to the Court of settling the list of contributories of the company, and any list so settled shall be *prima facie* evidence of the liability of the persons named therein to be contributories;
- (i) the liquidators may at any time after the passing of the resolution for winding up the company, and before they have ascertained the sufficiency of the assets of the company, call on all or any of the contributories for the time being settled on the list of contributories to the extent of their liability to pay all or any sums they deem necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves, and the liquidators may in making a call take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same;

- (j) the liquidators shall pay the debts of the company and adjust the rights of the contributories amongst themselves.

**202.** Where a company limited by guarantee and having a capital divided into shares, is being wound up voluntarily, any share capital that may not have been called up shall be deemed to be assets of the company, and to be a specialty debt due from each member to the company to the extent of any sums that may be unpaid on any shares held by him, and payable at such time as may be appointed by the liquidator.

Effect of winding up on share capital of company limited by guarantee.

**203.** A company about to be wound up voluntarily, or in the course of being wound up voluntarily, may, by an extraordinary resolution, delegate to its creditors, or to any committee of its creditors, the power of appointing liquidators or any of them, and supplying any vacancies in the appointment of liquidators, or may by a like resolution enter into any arrangement with respect to the powers to be exercised by the liquidators, and the manner in which they are to be exercised; and any act done by the creditors in pursuance of such delegated power shall have the same effect as if it had been done by the company.

Power of company to delegate authority to appoint liquidators.

**204.** Any arrangement entered into between a company about to wind up voluntarily, or in the course of being wound up voluntarily, and its creditors, shall be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors, subject to such right of appeal as is hereinafter mentioned.

Arrangements when binding on creditors.

**205.** Any creditor or contributory of a company that has in manner aforesaid entered into any arrangement with its creditors, may, within three weeks from the date of the completion of such arrangement, appeal to the Court against such arrangement, and the Court may thereupon, as it thinks just, amend, vary or confirm the same.

Power of creditor or contributory to appeal.

**206.** Where a company is being wound up voluntarily the liquidators or any contributory of the company may apply to the Court to determine any question arising in the matter of such winding up, or to exercise, as respects the enforcing of calls, or

Power for liquidators or contributories in voluntary winding up to apply to Court.

in respect of any other matter, all or any of the powers which the Court might exercise if the company were being wound up by the Court; and the Court, if satisfied that the determination of such question, or the required exercise of power, will be just and beneficial, may accede wholly or partially to such application, on such terms and subject to such conditions as the Court thinks fit, or it may make such other order or decree on such application as the Court thinks just.

Power of liquidators to call general meeting.

**207.** Where a company is being wound up voluntarily the liquidators may, from time to time, during the continuance of such winding up, summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution or for any other purposes they think fit; and in the event of the winding up continuing for more than one year, the liquidators shall summon a general meeting of the company at the end of the first year, and of each succeeding year from the commencement of the winding up, or as soon thereafter as may be convenient, and shall lay before such meeting an account showing their acts and dealings, and the manner in which the winding up has been conducted during the preceding year.

Power to fill up vacancy in liquidators.

**208.** If any vacancy occurs in the office of liquidators appointed by the company, by death, resignation or otherwise, the company in general meeting, may, subject to any arrangement they may have entered into with their creditors, fill up such vacancy, and a general meeting for the purpose of filling up such vacancy may be convened by the continuing liquidators, if any, or by any contributory of the company, and shall be deemed to have been duly held, if held in manner prescribed by the regulations of the company, or in such other manner as may, on application by the continuing liquidator, if any, or by any contributory of the company, be determined by the Court.

Power of Court to appoint liquidators.

**209.** If from any cause whatever there is no liquidator acting in the case of a voluntary winding up, the Court may, on the application of a contributory, appoint a liquidator or liquidators; the Court may also, on due cause shown, remove any liquidator and appoint another liquidator to act in the manner of voluntary winding up.

**210.** As soon as the affairs of the company are fully wound up the liquidators shall make up an account showing the manner in which such winding up has been conducted and the property of the company disposed of; and thereupon they shall call a general meeting of the company for the purpose of having the account laid before them and hearing any explanation that may be given by the liquidators. The meeting shall be called by advertisement, specifying the time, place and object of such meeting; and such advertisement shall be published, one month at least previously to the meeting, in *The Newfoundland Gazette*.

Liquidators on conclusion of winding up to make up an account.

**211.** The liquidators shall make a return to the Registrar of such meeting having been held and of the date at which the same was held, and on the expiration of three months from the date of the registration of such return, the company shall be deemed to be dissolved. If the liquidators make default in making such return to the Registrar they shall incur a penalty not exceeding twenty-five dollars for every day during which such default continues.

Liquidators to report meeting to Registrar.

**212.** All costs, charges and expenses properly incurred in the voluntary winding up of a company, including the remuneration of the liquidators, shall be payable out of the assets of the company in priority to all other claims.

Costs of voluntary liquidation.

**213.** The voluntary winding up of a company shall not be a bar to the right of any creditor of such company to have the same wound up by the Court, if the Court is of opinion that the rights of such creditor will be prejudiced by a voluntary winding up.

Saving of rights of creditors.

**214.** Where a company is in course of being wound up voluntarily, and proceedings are taken for the purpose of having the same wound up by the Court, the Court may, if it thinks fit, notwithstanding that it makes an order directing the company to be wound up by the Court, provide in such order or in any other order for the adoption of all or any of the proceedings taken in the course of the voluntary winding up.

Power of Court to adopt proceedings of voluntary winding up.

#### WINDING UP SUBJECT TO THE SUPERVISION OF THE COURT.

**215.** When a resolution has been passed by a company to wind up voluntarily the Court may make an order directing that the voluntary winding up should continue, but subject to such supervision of the Court, and with such liberty for creditors, con-

Power of Court on application to direct winding up subject to supervision.

tributories, or others to apply to the Court, and generally upon such terms and subject to such conditions as the Court thinks just.

Petition for winding up subject to supervision.

**216.** A petition, praying wholly or in part that a voluntary winding up should continue, but subject to the supervision of the Court, and which winding up is hereinafter referred to as a winding up subject to the supervision of the Court, shall, for the purpose of giving jurisdiction to the Court over suits and actions, be deemed to be a petition for winding up the company by the Court.

Court may have regard to wishes of creditors.

**217.** The Court may, in determining whether a company is to be wound up altogether by the Court, or subject to the supervision of the Court in the appointment of liquidator or liquidators, and in all other matters relating to the winding up subject to supervision, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence, and may direct meetings of the creditors or contributories to be summoned, held and regulated in such manner as the Court directs, for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court. In the case of creditors regard shall be had to the value of the debts due to each creditor; and, in the case of contributories, to the number of votes conferred on each contributory by the regulations of the company.

Power of Court to appoint additional liquidator in winding up subject to supervision.

**218.** Where an order is made by the Court for a winding up subject to the supervision of the Court, the Court may, in such order or in any subsequent order, appoint any additional liquidator or liquidators; and any liquidators so appointed by the Court shall have the same powers, be subject to the same obligations, and in all respects stand in the same position as if they had been appointed by the company. The Court may from time to time remove any liquidators so appointed by the Court, and fill any vacancy occasioned by such removal, or by death or resignation.

Effect of order of Court for winding up subject to supervision.

**219.** Where an order is made for a winding up subject to the supervision of the Court, the liquidators appointed to conduct such winding up may, subject to any restrictions imposed by the Court, exercise all their powers, without the sanction or intervention of the Court, in the same manner as if the company

were being wound up altogether voluntarily; but, save as aforesaid, any order made by the Court for a winding up subject to the supervision of the Court shall for all purposes, including the staying of actions, suits and other proceedings, be deemed to be an order of the Court for winding up the company by the Court, and shall confer full authority on the Court to make calls, or to enforce calls made by the liquidators, and to exercise all other powers which it might have exercised if an order had been made for winding up the company altogether by the Court.

**220.** Where an order has been made for the winding up of a company subject to the supervision of the Court, and such order is afterwards superseded by an order directing the company to be wound up compulsorily, the Court may in such last mentioned order, or in any subsequent order, appoint the voluntary liquidators or any of them, either provisionally or permanently, and either with or without the addition of any other persons, to be the liquidators.

Appointment in certain cases of voluntary liquidators to be liquidators.

#### SUPPLEMENTARY PROVISIONS AS TO WINDING UP.

**221.** Where any company is being wound up by the Court, or subject to the supervision of the Court, all dispositions of the property, effects and things in action of the company, and every transfer of shares, or alteration in the status of the members of the company, made between the commencement of the winding up and the order for winding up shall, unless the Court otherwise orders, be void.

Disposition after the commencement of the winding up avoided.

**222.** Where any company is being wound up, all books, accounts, and documents of the company and of the liquidators shall, as between the contributories of the company, be *prima facie* evidence of the truth of all matters purporting to be therein recorded.

The books of the company to be evidence.

**223.** Where any company has been wound up under this Act and is about to be dissolved, the books, accounts and documents of the company and of the liquidators may be disposed of in the following way, that is to say, where the company has been wound up by or subject to the supervision of the Court, in such way as the Court directs, and where the company has been wound up voluntarily, in such way as the company by an extra-

Provision as to disposal of books, etc., of company.

ordinary resolution directs, but after the lapse of five years from the date of such dissolution no responsibility shall rest on the company, or the liquidators, or any one to whom the custody of such books, accounts and documents has been committed, by reason that the same or any of them cannot be made forthcoming to any party or parties claiming to be interested therein.

Inspection  
of books.

**224.** Where an order has been made for winding up a company by the Court, or subject to the supervision of the Court, the Court may make such order for the inspection by the creditors and contributories of the company of its books and papers as the Court thinks just, and any books and papers in the possession of the company, may be inspected by creditors or contributories in conformity with the order of the Court, but not further or otherwise.

Power of  
assignee to sue.

**225.** Any person to whom any thing in action belonging to the company is assigned, in pursuance of this Act, may bring or defend any actions or suit relating to such thing in action in his own name.

Set-off.

**226.** Where there have been mutual credits, mutual debts, or other mutual dealings between a company for whose winding up an order has been made, and any person proving or claiming to prove a debt under such winding-up order, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party to the other, and the balance of the account and no more, shall be claimed or paid on either side respectively; but a person shall not be entitled under this section to claim the benefit of any set-off against the property of a company in any case where he had given credit to the company, at any time after the date of the commencement of the winding up of such company.

Debts of all  
description  
to be proved.

**227.** In the event of any company being wound up under this Act, all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as is possible, of the value of all such debts or claims as may be subject to any contingency or sound only in damages or for some other reason do not bear a certain value.

**228.** Subject to the express provisions of this Act, in the winding up of any company whose assets may prove to be insufficient for the payment of its debts and liabilities and the costs of winding up, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors, and as to debts, and liabilities provable, and as to the valuation of annuities, and future and contingent liabilities respectively, as may be in force for the time being under the law of insolvency with respect to the estates of persons declared insolvent, and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of such company may come in under the winding up of such company, and make such claims against the same as they may respectively be entitled to.

Rights of secured and unsecured creditors in the case of insolvent companies being wound up.

**229.** In the distribution of the assets of any company being wound up under this Act the provisions of The Judicature Act, as regards the rights of the landlord or other persons to whom rent is due and as regards persons who are privileged creditors, and persons who are preferential creditors, shall govern such distribution in respect thereof in the same manner as if the company being wound up were a person declared insolvent under the said Act.

Priority of debts.

**230.** In the winding up of any company the debts mentioned in the preceding section shall, so far as the assets of the company available for payment of general creditors may be insufficient to meet them, have priority over the claims of holders of debentures or debenture stock under any floating charge created by such company, and shall be paid accordingly out of any property comprised in or subject to such charge.

Priority of certain debts.

**231.** In case a receiver is appointed on behalf of the holders of any debentures or debenture stock of a company secured by a floating charge, or in case possession is taken by or on behalf of such debenture holders of any property comprised in or subject to such charge, then, and in either of such cases, if the company is not at the time in course of being wound up, the debts mentioned in Section 229 shall be paid forthwith out of any assets coming to the hands of the receiver, or other person taking possession as aforesaid, in priority to any claim for principal or interest in respect of such debentures or debenture stock. And the periods of time mentioned in the said section shall be

Payment of debts out of assets in certain cases.

reckoned from the date of the appointment of the receiver, or possession being taken as aforesaid, as the case may be. But any payments made under this section shall be recouped as far as may be out of the assets of the company available for payment of general creditors.

General scheme of liquidation may be sanctioned.

**232.** The liquidators may, with the sanction of the Court where the company is being wound up by the Court or subject to the supervision of the Court, and with the sanction of an extraordinary resolution of the company where the company is being wound up altogether voluntarily, pay any classes of creditors in full after satisfying all claims under Section 229 or make such compromise or other arrangement as the liquidators may deem expedient with creditors or persons claiming to be creditors, or persons having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable.

Power to compromise.

**233.** The liquidators may, with the sanction of the Court, where the company is being wound up by the Court or subject to the supervision of the Court, and with the sanction of an extraordinary resolution of the company, where the company is being wound up altogether voluntarily, compromise all calls and liabilities to calls, debts, and liabilities capable of resulting in debts, and all claims, whether present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and any contributory or alleged contributory, or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets of the company or the winding up of the company, upon the receipt of such sums, payable at such times and generally upon such terms as may be agreed upon, with power for the liquidators to take any security for the discharge of such debts or liabilities, and to give complete discharges in respect of all or any such calls, debts or liabilities.

Power for liquidator to accept shares, etc., as a consideration of sale of property of company.

**234.—(1)** Where any company is proposed to be or is in the course of being wound up altogether voluntarily, and the whole or a portion of its business or property is proposed to be transferred or sold to another company, the liquidators of the first mentioned company, may, with the sanction of a special resolu-

tion of the company by whom they were appointed, conferring either a general authority on the liquidators, or an authority in respect of any particular arrangement, receive in compensation or part compensation for such transfer or sale, shares, policies or other like interests in such other company, for the purpose of distribution amongst the members of the company being wound up, or may enter into any other arrangement whereby the members of the company being wound up may in lieu of receiving cash, shares, policies or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the purchasing company; and any sale made or arrangements entered into by the liquidators in pursuance of this section shall be binding on the members of the company being wound up; subject to this proviso, that if any member of the company being wound up who has not voted in favour of the special resolution passed by the company, of which he is a member expresses his dissent from any such special resolution in writing, addressed to the liquidators or one of them, and left at the registered office of the company not later than seven days after the date of the meeting at which such special resolution was passed, such dissenting member may require the liquidators to do one of the following things as the liquidators may prefer, that is to say, either to abstain from carrying such resolution into effect, or to purchase the interest held by such dissenting member at a price to be determined in manner hereinafter mentioned, such purchase money to be paid before the company is dissolved, and to be raised by the liquidators in such manner as may be determined by special resolution. No special resolution shall be deemed invalid for the purposes of this section by reason that it is passed antecedently to or concurrently with any resolution for winding up the company, or for appointing liquidators; but if any order be made within a year for winding up the company by or subject to the supervision of the Court, such resolution shall not be of any validity unless it is sanctioned by the Court.

(2) In subsection (1) the words "another company", "other company", and "purchasing company" include any company registered under this Act.

Meaning of "company" in subsection (1).

**235.** The price to be paid for the purchase of the interest of any dissenting member may be determined by agreement, but

Mode of determining price.

if the parties dispute about the same, such dispute shall be settled by arbitration.

Where compromise proposed, Court may order a meeting of creditors, etc., to decide as to same.

**236.** Where any compromise or arrangement shall be proposed between a company which is, at the time of the passing of this Act or afterwards, in the course of being wound up, either voluntarily or by or under the supervision of the Court, under this Act, and the creditors of such company, or any class of such creditors, it shall be lawful for the Court in addition to any other of its powers, on the application in a summary way of any creditor or the liquidator, to order that a meeting of such creditors or class of creditors shall be summoned in such manner as the Court shall direct, and if a majority in number representing three-fourths in value of such creditors or class of creditors present either in person or by proxy at such meeting shall agree to any arrangement or compromise, such arrangement or compromise shall, if sanctioned by an order of the Court, be binding on all creditors or class of creditors, as the case may be, and also on the liquidator and contributories of the said company.

Certain attachments, etc., to be void.

**237.** Where any company is being wound up by the Court or subject to the supervision of the Court, any attachment, distress or execution put in force against the estate or effects of the company after the commencement of the winding up shall be void to all intents.

Fraudulent preference.

**238.** Any such conveyance, mortgage, delivery of goods, payment, execution, or other act relating to property, as would, if made or done by or against any individual trader, be deemed in the event of his insolvency to have been made or done by way of undue or fraudulent preference of the creditors of such trader, shall, if made or done by or against any company, be deemed in the event of such company being wound up under this Act, to have been made or done by way of undue or fraudulent preference of the creditors of such company and shall be invalid accordingly; and for the purposes of this section the presentation of a petition for winding up a company shall in the case of a company being wound up by the Court or subject to the supervision of the Court, and a resolution for winding up the company shall in the case of a voluntary winding up, be deemed to correspond with a declaration of insolvency in the case of an individual trader; and any conveyance or assignment made by any company

formed under this Act of all its estate and effects to trustees for the benefit of all its creditors shall be void to all intents.

**239.** If any director, officer or contributory of any company, wound up under this Act, destroys, mutilates, alters or falsifies any books, papers, writings or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account, or other document belonging to the company, with intent to defraud or deceive any person, every person so offending shall be deemed to be guilty of a misdemeanor, and upon being convicted shall be liable to imprisonment for a term not exceeding two years, with or without hard labour.

Penalty on falsification of books.

**240.** Where any order is made for winding up a company by the Court, or subject to the supervision of the Court, if it appears in the course of such winding up that any past or present director, manager, officer, or member of such company has been guilty of any offence in relation to the company for which he is criminally responsible, the Court may, on the application of any person interested in such winding up, or of its own motion, direct the liquidator to institute and conduct a prosecution or prosecutions for such offence, and may order the costs and expenses to be paid out of the assets of the company.

Prosecution of delinquent directors, in the case of winding up by Court.

**241.** Where a company is being wound up altogether voluntarily, if it appears to the liquidators conducting such winding up that any past or present director, manager, officer, or member of such company has been guilty of any offence in relation to the company for which he is criminally responsible, it shall be lawful for the liquidators, with the previous sanction of the Court, to prosecute such offender, and all expenses properly incurred by them in such prosecution shall be payable out of the assets of the company in priority to all other liabilities.

Prosecution of delinquent directors, etc., in case of voluntary winding up.

**242.** If any person, upon any examination upon oath or affirmation authorized under this Act, or in any affidavit, deposition or solemn affirmation in or about the winding up of any company under this Act, or otherwise in or about any matter arising under this Act, wilfully and corruptly gives false evidence, he shall upon conviction, be liable to the penalties of wilful perjury.

Penalty for perjury.

Registrar of  
Supreme Court  
to furnish  
certain  
information to  
Registrar  
of companies.

**243.** Where proceedings in respect of a company have been taken under the *Bankruptcy Act* (Canada) or the *Winding up Act* (Canada) the Registrar of the Supreme Court shall from time to time furnish to the Registrar of Companies such report of the proceedings as the Registrar of Companies requests.

WINDING UP OF ASSOCIATIONS UNDER THIS ACT.

Provision  
as to dissolution  
of associations.

**244.** A registered association may be dissolved

- (a) by an order to wind up the association, or a resolution for the winding up thereof, made as is directed in regard to companies by this Act, the provisions whereof shall apply to any such order or resolution; or
- (b) by the consent of three-fourths of the members, testified by their signatures to an instrument of dissolution.

Liability of  
members of  
a registered  
association  
in the event  
of its  
winding up.

**245.** When a registered association is wound up in pursuance of an order or resolution, the liability of a present or past member of the association to contribute for payment of the debts and liabilities of the association, the expenses of winding up, and the adjustment of the rights of contributories amongst themselves, shall be qualified as follows:

- (a) No individual, association or company, who or which has ceased to be a member for one year or upwards prior to the commencement of the winding up, shall be liable to contribute.
- (b) No individual, association or company shall be liable to contribute in respect of any debt or liability contracted after he or it ceased to be a member.
- (c) No individual, association or company, not a member, shall be liable to contribute, unless it appears to the Court that the contributions of the existing members are insufficient to satisfy the just demands on the society.
- (d) No contribution shall be required from any individual, association or company exceeding the amount, if any,

unpaid on the shares in respect of which he or it is liable as a past or present member.

- (e) An individual, association or company shall be taken to have ceased to be a member in respect of any withdrawable share withdrawn, from the date of the notice or application for withdrawal.

WINDING UP OF UNREGISTERED COMPANIES.

**246.** Subject as hereinafter mentioned, any partnership, association or company, consisting of more than three members, and not included under this Act, and hereinafter included under the term unregistered company, may be wound up under this Act, and all the provisions of this Act with respect to winding up, shall apply to such company with the following exceptions and additions:

Winding up  
of unregistered  
companies.

- (a) An unregistered company shall, for all the purposes of the winding up of such company be deemed to have its registered office in that part of the province where its principal place of business is situate, and for such purposes, such principal place of business shall be its registered office.
- (b) No unregistered company shall be wound up under this Act voluntarily or subject to the supervision of the Court.
- (c) The circumstances under which an unregistered company may be wound up are as follows, that is to say,
  - (i) whenever the company has dissolved or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs,
  - (ii) whenever the company is unable to pay its debts,
  - (iii) whenever the Court is of opinion that it is just and equitable that the company should be wound up.

(d) An unregistered company shall for the purposes of this Act, be deemed to be unable to pay its debts

(i) whenever a creditor to whom the company is indebted, at law or in equity, by assignment or otherwise, in a sum exceeding two hundred and fifty dollars, then due, has served on the company by leaving the same at the principal place of business of the company, or by delivering to the secretary or some director or principal officer of the company, or by otherwise serving the same in such manner as the Court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has for the space of three weeks succeeding the service of such demand neglected to pay such sum, or to secure or compound for the same to the satisfaction of the creditor,

(ii) whenever any action, suit or other proceeding, has been instituted against any member of the company for any debt or demand due or claimed to be due from the company, or from him in his character of member of the company, and notice in writing of the institution of such action, suit, or other legal proceeding having been served upon the company by leaving the same at the principal place of business of the company, or by delivering it to the Secretary or some director, manager or principal officer of the company, or by otherwise serving the same in such manner as the Court may approve or direct, the company has not within ten days after service of such notice paid, secured, or compounded for such debt or demand, or procured such action, suit, or other legal proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against such action, suit, or other legal proceeding, and against all costs, damages and expenses to be incurred by him by reason of the same,

- (iii) whenever execution or other process issued on a judgment or order obtained in the Court, in favour of any creditor, in any proceeding at law or in equity, instituted by such creditor against the company or any member thereof as such, or against any person authorized to be sued as a nominal defendant on behalf of the company, is returned unsatisfied,
- (iv) whenever it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts.

**247.** In the event of an unregistered company being wound up every person shall be deemed to be a contributory who is liable at law or in equity to pay or contribute to the payment of any debt or liability of the company or to pay or to contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves or to pay or contribute to the payment of the costs, charges and expenses of winding up the company, and every such contributory shall be liable to contribute to the assets of the company in the course of the winding up all sums due from him in respect of any such liability as aforesaid; but in the event of the death or insolvency of any contributory, the provisions contained in this Act, with respect to the personal representatives of a deceased contributory, and to the trustee of an insolvent contributory, shall apply.

Contributories.

**248.** The Court may at any time after the presentation of a petition for the winding up of an unregistered company, and before making an order for winding up the company, upon the application of any creditor of the company, restrain further proceedings in any action, suit or proceeding against any contributory of the company or against the company as provided in Section 143 of this Act, upon such terms as the Court may think fit.

Staying of proceedings.

**249.** Where an order has been made for winding up an unregistered company, in addition to the provisions contained in this Act in the case of companies formed under this Act, it is hereby further provided that no suit, action or other legal proceeding, shall be commenced or proceeded with against any contributory of the company in respect of any debt of the company

No action, etc., against unregistered company after winding up order, except by leave of Court.

except with the leave of the Court, and subject to such terms as the Court may impose.

Vesting order  
in certain  
cases.

**250.** If any unregistered company has no power to sue or be sued in a common name, or if for any reason it appears expedient, the Court may by the order made for winding up such company, or by any subsequent order, direct that all such property, real and personal, including all interest, claims and rights into and out of property, real and personal, and including things in action, as may belong to or be vested in the company, or to or in any person or persons in trust for or on behalf of the company or any part of such property, is to vest in the liquidator or liquidators, and thereupon the same or such part thereof as may be specified in the order shall vest accordingly, and the liquidator or liquidators may, in his or their name or names and after giving such indemnity as the Court directs, bring or defend any actions, suits, or other legal proceedings relating to any property vested in him or them, or any actions, suits, or other legal proceedings necessary to be brought or defended for the purposes of effectually winding up the company and recovering the property thereof.

Powers of  
Court, liquida-  
tion, etc.

**251.** The provisions made by this Part of this Act with respect to unregistered companies shall be deemed to be made in addition to and not in restriction of the provisions contained in this Act, with respect to winding up registered companies by the Court, and the Court or liquidator may in addition to anything contained in this and the five preceding sections, exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up registered companies formed under this Act, but an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Act, and then only to the extent provided by this Act.

#### PART V.

##### *Application of this Act to Existing Companies and Associations and other Matters.*

Companies  
capable of be-  
ing registered,

**252.** Every company, association or society heretofore incorporated in pursuance of any Act of the Legislature, and consist-

ing of three or more members, and every company incorporated by a special Act of the Legislature and consisting of three or more members, may register itself under this Part as a company limited by shares, or a company limited by guarantee or an association under Section 253 of this Act or as an unlimited company, as the case may be, and no such registration shall be invalid by reason that it has taken place with a view to the company being wound up.

**253.**—(1) Where any association is about to be formed as a limited company, if it proves to the Minister of Provincial Affairs that it is formed for the purpose of promoting commerce, art, science, religion, charity or any other useful object, and that it is the intention of such association to apply the profits, if any, or other income of the association for promoting its objects and to prohibit the payment of any dividend to the members of the association, the Minister may by licence under his hand, direct such association to be registered with limited liability, without the addition of the word "Limited" to its name and such association may be registered accordingly and upon registration shall enjoy all the privileges and be subject to the obligations by this Act imposed on limited companies, with the exception that none of the provisions of this Act that require a limited company to use the word "Limited" as any part of its name shall apply to an association so registered. The licence by the Minister of Provincial Affairs may be granted upon such condition and subject to such regulations as the Minister thinks fit to impose, and such conditions and regulations shall be binding on the association and may, at the option of the Minister, be inserted in the memorandum and articles of association, or in both or one of such documents.

Registration of charitable companies.

(2) The Registrar shall collect a fee of one dollar for the licence referred to in subsection (1).

**254.** The procedure for registering under this Part any existing company shall be as follows:

- (a) The directors shall call a meeting of the shareholders of the company by sending to each shareholder through the post in a prepaid letter addressed to him at his address as recorded in the books of the company, or, if he has

Procedure prior to application for registration by existing companies.

no such recorded address, then at his usual or last known place of abode in Newfoundland, seven days' notice at the least, specifying the place, the day and the hour of meeting, and containing a copy of the resolution to be submitted to such meeting. The notice shall be deemed to have been served at the time when the letter containing the same is put into the post office, and in proving such service shall be sufficient to prove the posting of the letter properly addressed. The accidental omission to give notice to any member, or the non-receipt by any member of such notice, shall not invalidate the proceedings at such meeting. The day of posting shall be counted in estimating the number of days' notice given.

- (b) If the directors should desire to change the name of the company, or to limit or extend its objects, or to increase or reduce its capital, or to provide for a new allotment of shares, such resolution shall contain particulars of the proposed alterations.
- (c) In case it shall be resolved by a majority vote of the shareholders present in person or by proxy at such meeting that the company be registered under this Act, the directors shall apply to the Registrar to have the company so registered. At such meeting every shareholder shall have one vote for every share held by him. The instrument appointing a proxy shall be in writing under the hand of the appointer, or if the appointer be a corporation, under its common seal, and shall be attested by one or more witness or witnesses. No person shall be appointed a proxy who is not a member of the company and entitled to vote, save that a corporation may appoint any one of its directors or officers. The instrument appointing a proxy shall be deposited with the secretary of the company at least two days before the meeting.

Application  
for registration  
by existing  
company.

**255.** Where an existing company applies for registration under this Part, there shall be delivered to the Registrar the following documents, duly verified:

- (a) A list showing the names, addresses and occupations of all persons who on a day named in such list, and not being more than six clear days before the day of registration, were members of such company, with the addition of the shares, held by such persons respectively, distinguishing, in cases where such shares are numbered, each share by its number.
- (b) The names of the directors of such company.
- (c) A copy of any Act of the Legislature, certificate or other instrument constituting or regulating the company.
- (d) If the company is intended to be registered as a limited company, a statement specifying the following particulars, that is to say,
  - (i) the nominal capital of the company and the number of shares into which it is divided,
  - (ii) the number of shares taken and the amount paid on each share,
  - (iii) the name of the company, with the addition of the word "Limited" as the last word thereof,
  - (iv) with the addition, in the case of a company intended to be registered as a company limited by guarantee, of a resolution declaring the amount of the guarantee.
- (e) A memorandum of association, or a memorandum and articles of association, in the cases where the same are severally required under Part I of this Act, and executed in the same manner and containing the same particulars as are necessary upon the first registration of a company.
- (f) A copy of the resolution passed at the meeting of the company referred to in Section 254,

Power of existing companies to vary objects of company, etc., upon registration.

**256.**—(1) Where an existing company applies for registration as aforesaid, the memorandum of association shall conform with the terms of the resolution of the company, and may, if so authorized by such resolution, extend, vary or limit the powers and objects of the company, and the certificate of incorporation may be issued to the company by its existing name or by any other name in which the last word is “Limited”.

(2) Where an existing company applies for registration as aforesaid, the capital of the company may be increased or decreased to any amount which may be fixed by the resolution of the company authorizing such registration.

(3) The said resolution may prescribe the manner in which the shares or stock in the company when registered under this Act are to be allotted, and, in default of its so doing, the control of the allotment shall vest absolutely in the directors of the company when registered under this Act.

(4) Whenever the Registrar considers that public notice of an intended application, as aforesaid, should be given, he may require such notice to be published in *The Newfoundland Gazette*, or otherwise as he thinks proper.

(5) The Registrar may require further evidence of the existence of a company applying for registration as aforesaid.

Certificate of registration of existing company.

**257.** Upon compliance by an existing company with the aforesaid requisitions, the Registrar shall certify under his hand that the company so applying for registration is incorporated as a company under this Act, and, in the case of a limited company, that it is limited, and thereupon such company shall be incorporated, and shall have perpetual succession and a common seal, with power to hold lands.

Certificate to be evidence of compliance with Act.

**258.** A certificate of incorporation given at any time to any company registered in pursuance of this Part, shall be conclusive evidence that all the requisitions herein contained in respect of registration under this Act have been complied with, and that the company is authorized to be registered under this Act as a limited or unlimited company, as the case may be, and the date of incorporation mentioned in such certificate shall be deemed

to be the date at which the company is incorporated under this Act.

**259.** All such property, real and personal, including all interests and rights in, to and out of property, real and personal, and all such franchises, powers, privileges, drawbacks, concessions, exemptions, obligations, things in action and rights of all kinds as may belong to or be vested in the company at the date of its registration under this Act shall, on such incorporation vest in and continue to belong to the company as incorporated under this Act for the same estate and interest, and to the same extent, as the same were vested in and enjoyed by the company prior to such registration.

Transfer of property to company.

**260.** The registration in pursuance of this Part of any company shall not affect or prejudice the liability of such company to have enforced against it, or its right to enforce, any debt or obligation incurred, or any contract entered into, by, to, with or on behalf of such company previously to such registration.

Registration not to affect obligations previously incurred.

**261.** All such actions and other legal proceedings as may at the time of the registration of any company registered in pursuance of this Part have been commenced by or against such company, or any officer or any member thereof, may be continued in the same manner as if such registration had not taken place; nevertheless, execution shall not issue against the effects of any individual member of such company upon any judgment, decree or order obtained in any action, suit or proceeding so commenced as aforesaid; but in the event of the property and effects of the company being insufficient to satisfy such judgment, decree or order, an order may be obtained for winding up the company.

Continuation of existing actions.

**262.**—(1) Every society or association heretofore incorporated in pursuance of any sections of any former Act of the Legislature may register itself as an association under this Act, upon proving to the Lieutenant-Governor in Council that it has been formed for any of the purposes specified in Section 253 of this Act, and obtaining the necessary licence therefor.

Registration of existing associations.

(2) The procedure for registering such existing association shall be similar to that provided in this Part for the registration of existing companies; and the Registrar may, in addition to the licence aforesaid, the resolution of the association and the memorandum and articles of association, require to be delivered to him all or any of the documents necessary to be delivered in the case of an application for the registration of an existing company.

(3) Upon compliance by an existing association with the said requisitions to the satisfaction of the Registrar, the said association shall be registered with limited liability, and, upon registration, shall enjoy all the privileges and be subject to the obligations by this Act imposed upon limited companies, with the exceptions named in Section 253 of this Act, and the property of the old association shall vest in the new association in the same manner as the property of an old company is vested in a new company upon its registration.

#### RULES.

#### Rules.

**263.**—(1) The Court or other authority empowered by any Act of the Legislature to make Rules of Court, shall have power to make rules, and to alter and amend the same,

- (a) for requiring or enabling all or any of the powers and duties conferred and imposed on the Court, by Sections 149, 175, 176, 177, 179 and 184, to be exercised or performed by the liquidator as an officer of the Court and subject to the control of the Court: Provided that the liquidator shall not, without the special leave of the Court, rectify the register of members, and shall not make any call without either the special leave of the Court or the sanction of the committee of inspection;
- (b) concerning the mode of proceeding to be had for winding up a company under this Act;
- (c) for carrying into effect the objects of this Act,

(2) Such rules shall be published in *The Newfoundland Gazette*, and thereupon shall have the same force as if hereby enacted.

(3) Until such rules shall have been made and published as aforesaid, the general rules and orders observed by the Courts in England having jurisdiction in the matter of companies incorporated in England under the Companies' Acts and in the winding up therefor, shall be held to apply to companies incorporated under this Act and to their winding up so far as the same are applicable.

#### ALTERATION OF FORMS.

**264.** The Forms set forth in the Second Schedule hereto, or Forms as near thereto as circumstances admit, shall be used in all matters to which such Forms refer; the Court may, from time to time, make such alterations in the Tables and Forms contained in the First Schedule hereto (so that the amount of fees payable to the Registrar in the said Schedule mentioned is not thereby increased) and in the Forms in the Second Schedule, or make such additions to the last-mentioned Forms, as it deems requisite. Any such Table or Form, when altered, shall be published in *The Newfoundland Gazette*, and upon such publication being made such Table or Form shall have the same force as if it were included in the Schedule to this Act, but no alteration made by the Court in the Table marked A contained in the First Schedule shall affect any company registered prior to the date of such alteration, or shall repeal, as respects such company, any portion of such Table.

#### PART VI.

##### *Domestic and Foreign Companies.*

#### REGISTRATION.

**265.** In this Part

Interpretation.

- (a) "business" means the object or purpose for which a foreign company is established but does not include the

business of banking or the construction or operation of a railway or of a telegraph line;

- (b) “charter” includes an Act, statute, ordinance or other provision of law by or under which a foreign company has been incorporated, and any amendments thereto applying to the company, and any memorandum of association, agreement or deed of settlement of the company, and any letters patent or other instrument incorporating the company, and any licence or certificate of registration of the company;
- (c) “charter and regulations” means the charter of a foreign company, and its articles of association, regulations, by-laws and rules;
- (d) “debenture” includes debenture stock, bonds and any other securities of a company constituting a charge on the assets of the company;
- (e) “domestic company” means any company, whether or not it is formed for gain, incorporated by or under any Act of the Legislature other than The Companies Act and other than a crown corporation;
- (f) “dominion company” means a company incorporated by or under an Act of the Parliament of Canada;
- (g) “foreign company” means a company incorporated otherwise than by or under an Act of the Legislature and includes a dominion company;
- (h) “private company” means a company that by its charter, memorandum of association, articles of association, regulations, by-laws or otherwise
  - (i) limits the number of its members to fifty not including persons who are in the employment of the company and persons who, having been formerly in the employment of the company, were, while

in that employment, and have continued after the determination of that employment to be members of the company, and

- (ii) either, in the case of a company having a share capital, restricts or prohibits the right to transfer any of its shares, and prohibits any invitation to the public to subscribe for any of its shares or securities, or
- (iii) in the case of a company not having a share capital, restricts or prohibits any transfer of the interest of any member of the company, and prohibits any invitation to the public to become members or to subscribe for any securities of the company;
- (i) “prospectus” means any prospectus, notice, circular, advertisement or other document inviting the public to subscribe for or purchase, or offering to the public for subscription or purchase, any shares or debentures of a company or an intended company;
- (j) “registration” means registration in accordance with this Part.

**266.**—(1) Every domestic and foreign company having gain for its object or part of its object

Domestic and foreign companies to register.

- (a) which carries on business in Newfoundland shall be registered under this Part within sixty days after this Part comes into force; or
- (b) which commences business in Newfoundland after this Part comes into force shall be registered under this Part within thirty days after commencing business in Newfoundland.

(2) A foreign company which is not duly incorporated by or under a statute, Act or ordinance of the province, state or country where the company was formed shall not be registered under this Part or carry on business in Newfoundland.

Foreign company not incorporated elsewhere not to be registered.

Saving.

(3) Subsection (2) does not apply to the corporation known as The Governor and Company of Adventurers of England trading into Hudson's Bay.

Domestic companies may be registered.

**267.** Every domestic company required to be registered under this Part shall file with the Registrar the documents referred to in paragraphs (a) to (e) of Section 255 and any company which registers or has registered under Part V of this Act shall be deemed to be registered under this Part.

Foreign company may be registered.

**268.—**(1) A foreign company may be registered in Newfoundland for any lawful purpose when it complies with this Part and pays the fees prescribed.

Registrar may refer applications to Lieutenant-Governor in Council.

(2) The Registrar may refer the application of any foreign company other than a dominion company to the Lieutenant-Governor in Council who may, at his discretion, refuse registration and the Registrar shall not register the company.

Registrar may restrict powers of foreign company.

(3) The Registrar may by his certificate restrict the powers which a foreign company other than a dominion company may exercise in Newfoundland and in this case the company shall, subject to this Part, carry on only those parts of its business or exercise only those of its powers which the certificate authorizes.

Appeal to Lieutenant-Governor in Council.

(4) If the Registrar decides to restrict the powers of a foreign company under subsection (3) he shall, before or after he issues his certificate, notify the company of his decision and the company or any member of it may appeal to the Lieutenant-Governor in Council within six months of the date on which the notification is sent by the Registrar to the company and the Lieutenant-Governor in Council may confirm, vary or overrule the decision of the Registrar, who shall issue his certificate accordingly.

Amalgamation of foreign companies.

**269.** Where any two or more foreign companies amalgamate, the company resulting from such amalgamation is a foreign company separate and distinct from its component parts for the purposes of this Part and shall itself comply with all the applicable requirements of this Part, notwithstanding that any of its component parts is registered under this Part or is a parent or subsidiary company as defined by Section 3.

**270.**—(1) Every foreign company required to be registered under this Part shall file with the Registrar a statement as in Form A of the Fourth Schedule specifying

Statement on application for registration.

- (a) the name of the company;
- (b) the province, state or country where the company is incorporated;
- (c) the date of incorporation;
- (d) the statute, Act or ordinance under which the company is incorporated;
- (e) full particulars of the charter and regulations of the company and all amendments thereto;
- (f) the period, if any, fixed by its charter for the duration of the company;
- (g) the extent, if any, to which the liability of members of the company is limited under its charter;
- (h) the business which the company will carry on in Newfoundland;
- (i) the date on which the company intends to commence business in Newfoundland;
- (j) the authorized, subscribed and paid-up capital of the company and the shares which the company is authorized to issue and their nominal or par value, if any;
- (k) the full address of the head office of the company outside Newfoundland;
- (l) the full address of the head office of the company in Newfoundland;
- (m) the full names, addresses and occupations of the directors of the company.

Idem.

(2) The statement shall declare that the company is a valid and subsisting corporation and legally authorized to transact business under its common seal, if it has one, and two directors or officers of the company shall make a statutory declaration on behalf of the company verifying the particulars set forth in the statement.

Copy of charter and a statutory declaration by solicitor to be filed.

(3) The statement shall be accompanied by

(a) a copy of the charter and regulations of the company verified in a manner satisfactory to the Registrar; and

(b) a statutory declaration by a solicitor of the Supreme Court that this section has been complied with and the Registrar may accept the declaration as sufficient evidence of compliance with the requirements of this section.

Where company proposes to sell its shares or debentures in Newfoundland.

(4) Subject to subsection (5), if the company proposes to sell any of its shares or debentures in Newfoundland the statement shall also be accompanied by

(a) a copy of its prospectus or a statement in lieu of the prospectus in Form B of the Fourth Schedule, subject to any changes which the facts demand; and

(b) official copies of any licence or other form of authority which the company is required to obtain under the laws of the province, state or country where it is incorporated before it is permitted to offer for subscription or sale any of its shares or debentures and of the material filed on the application for the licence or other form of authority, except in so far as the Registrar dispenses with any of that material.

Subsection (4) does not apply to private companies.

(5) Subsection (4) does not apply to a private company.

Documents in foreign language.

(6) Where any document required to be filed under this section is not in the English language, the Registrar may require a translation thereof notarily certified.

**271.**—(1) Every foreign company shall, before registration, file with the Registrar a fully executed power of attorney under its common seal in Form C of the Fourth Schedule empowering some person named therein and residing in Newfoundland to act as its attorney for the purpose of receiving service of process in all suits and proceedings by or against the company within Newfoundland and of receiving all lawful notices and declaring that service of process in respect of those suits and proceedings and of those notices on the attorney shall be legal and binding to all intents and purposes whatever.

Power of attorney.

(2) A company may by a new or other power of attorney executed and deposited pursuant to subsection (1) appoint another attorney within Newfoundland for the purposes set forth in and to replace the attorney appointed under that subsection.

Idem.

(3) If an attorney named pursuant to this section ceases to reside in Newfoundland or if the power of attorney filed becomes invalid or ineffectual for any other reason the company shall file another power of attorney which shall comply with subsection (1).

Idem.

(4) Service of process and notices on an attorney appointed under this section is legal and binding on the company.

Effect of service on attorney.

(5) Every deed which an attorney appointed pursuant to this section signs on behalf of the company is, if the company has empowered him to execute deeds, binding on the company in Newfoundland if he signs it with his own seal and has the same effect as if it were under the seal of the company.

Execution of deeds by attorney.

**272.**—(1) Upon receipt of the statement and other documents prescribed by this Part and the proper fees and subject to this Part the Registrar shall issue a certificate showing that the company has been registered as a foreign company under this Act and shall publish a notice of the registration of the company in *The Newfoundland Gazette*.

Certificate of registration.

(2) A certificate of registration of a foreign company given by the Registrar under this section is, so long as it remains in force, conclusive evidence of the registration, of the date thereof and of any other facts which it purports to certify.

Certificate to be conclusive evidence.

Certificate includes one issued under Section 279.

(3) In this section "certificate of registration" includes a certificate issued under Section 279.

Effect of registration.

**273.** Subject to this Act and the laws of Newfoundland, a foreign company registered under this Act may carry on business in Newfoundland in accordance with its certificate of registration and for that purpose may exercise the powers contained in its charter and regulations.

Dominion companies.

**274.** Nothing in this Act shall be deemed to affect the status of a dominion company or to impair its right to carry on business in Newfoundland.

Suspension or revocation of registration.

**275.—**(1) The Lieutenant-Governor in Council may suspend or revoke the registration of a foreign company other than a dominion company for good cause or for failure to comply with any requirements of this Part and he may remove or cancel a suspension or revocation, subject to any conditions which he deems proper.

Effect on creditors.

(2) The suspension or revocation of the registration of a foreign company does not affect the rights of any creditor of the company.

Notice of revocation to be published.

(3) The Registrar shall publish in *The Newfoundland Gazette* notice of any suspension or revocation or the removal or cancellation thereof.

Cancellation of registration.

**276.—**(1) Where a foreign company ceases to carry on business in Newfoundland the company shall file a notice to that effect with the Registrar and thereupon the Registrar shall cancel the registration of the company and shall, if he deems fit, publish a notice of the cancellation in *The Newfoundland Gazette*.

Idem.

(2) Where a foreign company ceases to exist and the Registrar obtains evidence to that effect which satisfies him the Registrar may cancel the registration of the company.

Revival of registration.

(3) Where the registration of a company has been cancelled under this section the Registrar may revive the registration if the company files such documents as he requires and pays the

proper fees and he may issue a new certificate of registration and, if he deems fit, require publication of notice of new registration in *The Newfoundland Gazette*.

**277.** A foreign company which carries on business in Newfoundland and fails to become registered under this Part is guilty of an offence and liable on summary conviction to a penalty not exceeding twenty dollars for every day during which the offence occurs.

Penalty.

#### DUTIES AND OBLIGATIONS.

**278.** Every foreign company to which this Part applies shall

Display of  
name of  
company.

- (a) paint or affix, and keep painted or affixed, its name on the outside of its head office and every other office or place in which it carries on its business in Newfoundland, in a conspicuous place, in letters easily legible; and
- (b) in the transaction of all its business within Newfoundland have its name mentioned in legible characters in all notices, advertisements and other official publications of the company and in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company and in all bills of parcels, invoices, receipts and letters of credit of the company.

**279.**—(1) Every foreign company the name of which has been changed or the charter or memorandum of association of which or the objects of the incorporation of which have been altered or the articles of association of which have been altered or added to shall, within one month after the change is made, file with the Registrar a duly certified copy of the special resolution, supplementary letters patent, order of the court, order in council or other document by which the change, alteration or addition was effected and thereupon and on receipt of the fee prescribed therefor the Registrar shall enter the new name in the register in place of the old name or shall, with the approval of the Attorney General, register the alteration or addition, as the case may be.

Alterations by  
foreign  
companies.

- Idem. (2) No registration of a foreign company effected under this Part before the change of name, alteration of the charter or memorandum of association or of the objects of incorporation, or the alteration of or addition to its articles, is valid for more than sixty days after the change, alteration or addition has been made unless subsection (1) has been complied with.
- Penalty. (3) A foreign company which defaults in filing with the Registrar any document required to be filed under subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding twenty dollars for every day during which the offence continues.
- Certificate of change or alteration. (4) Upon registration under subsection (1) of the change of name, alteration of the charter or memorandum of association or of the objects of incorporation, the Registrar shall issue to the company a certificate under his hand in a form adapted to the circumstances and the certificate is conclusive evidence of the change of name, alteration of the charter or memorandum of association or of the objects of incorporation as the case may be.
- Notice of change of name. (5) The Registrar shall publish in *The Newfoundland Gazette* a notice of change of name registered under subsection (1) and the publication of the notice is conclusive evidence of the change.
- Prospectuses to be filed. **280.**—(1) Every foreign company, other than a dominion company, to which this Part applies shall file with the Registrar a copy of any prospectus offering for subscription or purchase in Newfoundland any of its shares or debentures and the prospectus shall state the province, state or country in which the company is incorporated and Sections 25, 27, 28 and 29 apply, *mutatis mutandis*, to every prospectus filed under this section.
- Idem. (2) Every dominion company to which this Part applies shall file with the Registrar a copy of any prospectus issued by it and inviting subscriptions or applications in Newfoundland for any of its shares or debentures.
- Regulations applicable to certain foreign companies. (3) Every foreign company which is required to file a prospectus under subsection (1) shall comply with all regulations made under Section 26 which are applicable to it.

(4) Where a foreign company which is required under subsection (1) or (2) to file a copy of a prospectus with the Registrar of Companies has filed a copy of its prospectus with the Registrar of Securities under The Securities Act or regulations made under that Act, the Registrar of Companies may exempt that company from filing a copy of that prospectus under subsection (1) or (2) if the company files with the Registrar of Companies a notice to the effect that the prospectus has been filed with the Registrar of Securities under The Securities Act. Exemption.

**281.**—(1) Every foreign company shall, not later than the first day of April in each year after the date of its registration, forward to the Registrar a return in Form D of the Fourth Schedule made up to the thirty-first day of December last preceding accompanied by the proper fees and setting forth Annual return.

- (a) the amount of the share capital of the company and the number of shares into which it is divided;
- (b) the number of the shares taken from the commencement of the company to the date of the return;
- (c) the amount called up on each share;
- (d) the total amount received from calls;
- (e) the total amount unpaid on calls;
- (f) the total number of shares forfeited;
- (g) the total amount, if any, agreed to be considered as paid on shares which have been issued as fully paid up otherwise than in cash;
- (h) the names and addresses of the persons who at the date of the return are the directors of the company;
- (i) the total amount of debt due from the company in respect of mortgages and charges;
- (j) the full address of the head office, giving the name of the city or town and street and number;

(k) the full address of the chief place of business in Newfoundland, giving the city or town and street and number;

(l) the nature of the business or businesses carried on during the year ended December 31st last;

(m) any other information which in the opinion of the Registrar should be filed in his office respecting the company.

Return in respect of shares without nominal or par value.

(2) A company issuing shares without any nominal or par value shall include in the return, in lieu of or in addition to the particulars required pursuant to paragraphs (a) to (g) of subsection (1), as the case may require, a statement of the number of those shares outstanding at the date of the return and the number which have been issued since the last return.

Returns to be certified.

(3) A director, officer or solicitor of the company shall certify the contents of any return made under this section.

Registrar may strike defaulting company off register.

(4) The Registrar may strike off the register a company, other than a dominion company, which neglects or refuses to file a return required under this section within the period limited therefor.

Offence.

(5) A company which neglects or refuses to file a return required under this section within the period limited therefor is guilty of an offence and liable on summary conviction to a fine not exceeding five dollars, and each day's continuance of such neglect or refusal constitutes a separate offence.

Exceptions.

(6) This section does not apply to a company which is required to forward a statement of its affairs to the Minister of Provincial Affairs pursuant to The Accident Insurance Companies (Licensing) Act or The Life Insurance Companies Act.

#### DISABILITIES AND PENALTIES.

Unregistered company incapable of maintaining certain actions.

**282.**—(1) Subject to subsections (2) and (3), a foreign company which is carrying on business in Newfoundland but is not registered under this Part is not capable of maintaining any action, suit or other proceeding in any Court in Newfoundland

in respect of any contract made in whole or in part within Newfoundland in the course of or in connection with its business.

(2) Where

Proviso.

- (a) a foreign company has been registered under this Part;
- (b) the registration of a foreign company is suspended or revoked and is subsequently restored; or
- (c) the company has been stricken off the register under this Part and is subsequently restored to the register

subsection (1) shall be read and construed as if no disability thereunder had ever attached to the company, notwithstanding that any contract referred to in that subsection was made or proceeding in respect thereof instituted by the company

- (d) before the date on which the company was or is so registered;
- (e) before the date when the registration is restored, subject nevertheless to any conditions imposed upon the company; or
- (f) before the date when the company was so restored, subject nevertheless to the terms of the order made by the Court.

(3) This section does not apply to

Exception.

- (a) a dominion company; or
- (b) a foreign company which is a judgment creditor applying to have a judgment registered in the Supreme Court under The Reciprocal Enforcement of Judgments Act.

**283.** Where an action, suit or other proceeding has been dismissed or otherwise decided against a foreign company on the ground that an act or transaction of the company was invalid or prohibited by reason of the company not having been registered pursuant to this Part, the company may, if it is registered pur-

Resumption of action upon registration.

suant to this Part, and upon such terms as to costs as the Court may order, maintain anew the action, suit or other proceeding as if no judgment had been rendered or entered therein.

Agents for  
unregistered  
company  
carrying on  
business.

**284.** Every company, domestic company, foreign company, firm, broker or other person acting as the agent or representative of or in any other capacity for a foreign company, other than a dominion company, which does not become registered as required by this Part is guilty of an offence and liable on summary conviction to a fine not exceeding twenty dollars for every day during which that company continues unregistered under this Part.

Offence where  
company does  
not comply  
with this Part.

**285.** A foreign company which after registration under this Part makes default in complying with any requirement of this Part which applies to it is guilty of an offence and, where no other penalty is provided, is liable on summary conviction to a fine not exceeding twenty dollars for every day during which the default continues.

Offer of  
shares, etc., of  
unregistered  
foreign  
company.

**286.**—(1) Subject to subsection (4), every company, domestic company or foreign company or firm which, and every broker or other person who, as owner or otherwise, offers to the public in a course of continued and successive acts within Newfoundland, for subscription or purchase by the public, any shares in or debentures or other securities of a foreign company, other than a dominion company, which is not registered under this Part, shall file with the Registrar before any offer thereof is made

- (a) where a prospectus relating to the shares, debentures or securities is issued, a copy of the prospectus showing the date of its issue and the province, state or country in which the company was incorporated and signed by the company, foreign company, firm, broker or other person making the offer, or, where no prospectus is issued, such information as the Registrar may require; and
- (b) where the company is required to obtain under the laws of the province, state or country in which it was incorporated a licence or other form of authority before it is permitted to offer for subscription or sale any of its

shares, debentures or other securities in that province, state or country, an official copy of the licence or other form of authority.

(2) Where subsection (1) applies no person shall issue in a form of application for, or publish or circulate any matter not amounting to a prospectus but which expressly or by implication invites the public to subscribe for or purchase, any shares, debentures or securities, unless that subsection has been complied with. Idem.

(3) Every company, foreign company or firm which, and a broker or other person who, fails to comply with, or contravenes any provision of this section is guilty of an offence and liable on summary conviction to a fine not exceeding five hundred dollars for each offence. Penalty.

(4) This section does not apply where the shares, debentures or other securities are listed on any stock exchange approved by the Registrar appointed under The Securities Act and proof thereof has been filed with the Registrar. Exception.

**287.**—(1) No person in Newfoundland shall offer for sale to the public in Newfoundland or invite the public in Newfoundland to subscribe for or purchase any shares in or debentures or securities of a company proposed to be formed outside Newfoundland, unless at the time of making the offer or invitation he states that the company has not yet been formed. Offers relating to proposed companies prohibited.

(2) Every person who contravenes this section is guilty of an offence and liable on summary conviction to a fine not exceeding one hundred dollars for each offence. Penalty.

**288.** The onus of proving that a foreign company is registered or that it is not required to register under this Part or that it has otherwise complied with this Part lies upon the accused in any prosecution under Sections 284 to 287. Onus of proof of registration.

**289.** No prosecution in respect of a violation of any provision of this Part shall be brought except with the written consent of the Attorney General. Consent of Attorney General before prosecution.

Fees

**290.** The Registrar shall collect and every domestic and foreign company shall pay such fees as the Lieutenant-Governor in Council may prescribe and the Lieutenant-Governor in Council may prescribe different fees for domestic and foreign companies.

Certain other provisions to apply.

**291.**—(1) Sections 22, 24, 25, 27, 28, 35, 42, 45, 50, 122 to 126, 128 to 130 apply *mutatis mutandis* to foreign companies registered under this Part but where any of those sections conflict with this Part this Part prevails.

Registration of certain mortgages and charges by foreign companies.

(2) When any foreign company which is required to be registered under this Part creates a mortgage or a fixed or floating charge on or in respect of property of that company, whether chattels real or chattels personal, located in the province, Sections 72 to 77 shall *mutatis mutandis* apply to the company in respect of such mortgage or charge.

## PART VII.

### *Insurance Companies.*

Interpretation.

**292.** In this Part

- (a) “cash-mutual insurance company” means a company without share capital or with guarantee capital stock subject to repayment by the company, in respect of which the dividend rate is limited by its Act or instrument of incorporation, which is empowered to undertake insurance on both the cash plan and the mutual plan;
- (b) “insurance” means the undertaking by a person to indemnify another person against loss or liability for loss in respect of a certain risk or peril to which the object of insurance may be exposed or to pay a sum of money or thing of value upon the happening of a certain event or upon the failure of a certain event to happen;
- (c) “insurance agency” means a company which for compensation solicits on behalf of an insurer or transmits for a person other than itself an application for or a

policy of insurance to or from the insurer or offers or acts or assumes to act in the solicitation for and negotiation of the insurance or in negotiating its continuance or renewal;

- (d) "insurance company" means a company formed for the purpose of carrying on or transacting business as an insurer;
- (e) "insurer" means a company undertaking or agreeing to offer or undertake a contract of insurance;
- (f) "Minister" means the Minister of Provincial Affairs;
- (g) "mutual insurance company" means a company without share capital or with guarantee capital stock subject to repayment by the company, in respect of which the dividend rate is limited by its Act or instrument of incorporation, which is empowered to undertake mutual insurance exclusively.

**293.** Notwithstanding any other provision of this Act, the Registrar shall not register an insurance company or insurance agency except with the prior written consent of the Minister and unless this Part has been complied with.

Registration of insurance companies.

**294.—(1)** The subscribers to the memorandum of association of an insurance company or insurance agency shall before filing the memorandum with the Registrar

Requirements before memorandum filed.

- (a) provide the Minister with a copy of the memorandum of association, articles of association and any other information which the Minister requires in respect of the proposed insurance company or insurance agency;
- (b) publish in at least four consecutive issues of *The Newfoundland Gazette*, and otherwise as the Minister may direct, a notice of their intention to apply for registration of an insurance company or insurance agency.

(2) A notice published under subsection (1) shall set forth

Contents of notice.

- (a) the name of the proposed insurance company or insurance agency;
- (b) a brief summary of the objects of the proposed insurance company or insurance agency;
- (c) the share capital of the proposed insurance company or insurance agency;
- (d) the names, addresses in full and occupations of the subscribers; and
- (e) such other information as the Minister may require the subscribers to the memorandum of association to publish.

Registration of insurance companies or agencies engaging in business other than insurance or as insurance agency.

**295.** The Registrar shall not, except with the consent of the Minister, register the memorandum of association of

- (a) an insurance company which permits the company to engage in any business other than that of insurance; or
- (b) an insurance agency which permits the agency to engage in any business other than that of an insurance agency,

and such other business as, in the opinion of the Minister, is incidental and necessary to the carrying on of the business of insurance or of an insurance agency as the case may be.

Minimum share capital requirements.

**296.—(1)** The Registrar shall not register an insurance company where the authorized share capital is less than

- (a) five hundred thousand dollars in the case of a company formed to carry on the business of life insurance; or
- (b) three hundred thousand dollars in the case of a company formed to carry on the business of insurance other than life insurance.

Capital to be divided into shares.

**(2)** Subject to this section, the authorized share capital of an insurance company shall be divided into shares of not less than

one hundred dollars each, but where not less than two hundred thousand dollars of the authorized share capital has been paid up in cash the shares or any class of shares may be divided into other shares with a par value of five dollars or any multiple of five dollars or an additional class of shares may be created having a par value of five dollars or any multiple of five dollars.

**297.** An insurance agency registered by the Registrar under this Act either before or after this Part came into force shall file with the Minister such information, if any, as the Minister requires.

Insurance agency to file information.

**298.**—(1) Upon the recommendation of the Minister the Lieutenant-Governor in Council may order the Registrar to, and upon receipt of the order the Registrar shall, strike off the register

Striking off register.

- (a) an insurance company whose authorized share capital does not comply with Section 296;
- (b) an insurance company or insurance agency which fails to comply with any provisions of this Act or any other statute or law to which it is subject;
- (c) an insurance company undertaking life insurance which, within one year after the date of filing its memorandum of association or of the coming into force of this Part, is unable to furnish to the Minister satisfactory evidence that not less than two hundred thousand dollars of its capital stock has been *bona fide* subscribed for and allotted and that at least one hundred thousand dollars of the subscribed stock has been paid up in cash;
- (d) an insurance company undertaking other than life insurance which, within one year after the date of filing its memorandum of association or of the coming into force of this Part, is unable to furnish to the Minister satisfactory evidence that
  - (i) where the company is undertaking insurance in Newfoundland only, not less than fifty thousand dollars of its capital stock has been *bona fide* subscribed and allotted and at least twenty-five thou-

sand dollars of the subscribed capital has been paid up in cash, and

- (ii) where the company is undertaking insurance elsewhere than in Newfoundland, not less than one hundred thousand dollars of its capital stock has been *bona fide* subscribed and allotted and at least fifty thousand dollars of the subscribed stock has been paid up in cash;
- (e) a mutual insurance company or a cash-mutual insurance company which is unable to furnish to the Minister satisfactory evidence that the total amount insured under the contracts of the company in force at the expiration of one year from the date of filing its memorandum of association or of the coming into force of this Part amounts to at least one hundred thousand dollars and thereafter the total amount insured under contract at all times equals at least one hundred thousand dollars;
- (f) an insurance company other than a company referred to in paragraphs (c), (d) and (e) which, within one year after the date of filing its memorandum of association or of the coming into force of this Part, is unable to furnish to the Minister satisfactory evidence that its net surplus of assets over all liabilities exceeds the amount fixed by paragraphs (c) and (d) for the paid-up capital stock of joint stock insurance companies and that its net surplus, together with the contingent liabilities of its members, if any, exceeds the amount fixed by paragraphs (c) and (d) for subscribed and allotted capital stock of joint insurance companies;
- (g) an insurance company whose assets are, in the opinion of the Minister, insufficient to justify its continuance in business; or
- (h) an insurance company or insurance agency which
  - (i) does not commence business in Newfoundland within one year after the date of filing its memor-

andum of association or of the coming into force of this Part,

- (ii) does not carry on business in Newfoundland during any period of one year or longer,
- (iii) discontinues business in Newfoundland at any time after it has entered into a contract of insurance or transacted any other business of insurance in Newfoundland, or
- (iv) carries on any business, enters into any contract or uses its funds for any purpose not authorized by its memorandum of association or by any statute or law applicable to the insurance company or insurance agency.

(2) Subsection (1) applies to insurance companies and insurance agencies incorporated before as well as to those incorporated after this Part came into force.

Application of subsection (1).

(3) An insurance company or insurance agency which transacts any business after it has been stricken off the register is guilty of an offence and liable to a fine not exceeding one hundred dollars a day for every day the offence continues.

Offence.

**299.** The Minister may authorize the Superintendent of Insurance to exercise any or all of his powers under this Part either in the name of the Minister or of the Superintendent.

Superintendent of Insurance.

### FIRST SCHEDULE

Schedules.

#### TABLE A

*Regulations for Management of a Company Limited by Shares.*

#### SHARES.

1. If several persons are registered as joint holders of any share, any one of such persons may give effectual receipts for any dividend payable in respect of such share.

2. Every member shall, on payment of twenty-five cents, or such less sum as the company in general meeting may prescribe, be entitled to a certificate under the common seal of the company, specifying the share or shares held by him, and the amount paid up thereon.

3. If such certificate is worn out or lost, it may be renewed on payment of twenty-five cents, or such less sum as the company in general meeting may prescribe.

#### CALLS ON SHARES.

4. The directors may from time to time make such calls upon the members in respect of all moneys unpaid on their shares as they think fit, provided that twenty-one days' notice at least is given of each call, and each member shall be liable to pay the amount of calls so made to the persons and at the time and places appointed by the directors.

5. A call shall be deemed to have been made at the time when the resolution of the directors authorizing such call was passed.

6. If the call payable in respect of any share is not paid before or on the day appointed for payment thereof, the holder for the time being of such share shall be liable to pay interest for the same at the rate of five per centum per annum from the day appointed for the payment thereof to the time of the actual payment.

7. The directors may, if they think fit, receive from any member willing to advance the same, all or any part of the moneys due upon the shares held by him beyond the sums actually called for; and upon the moneys so paid in advance, or so much thereof as from time to time exceed the amount of the calls then made upon the shares in respect of which such advance has been made, the company may pay interest at such rate as the member paying such sum in advance and the directors agree upon.

## TRANSFER OF SHARES.

8. The instrument of transfer of any shares in the company shall be executed both by the transferor and the transferee, and the transferor shall be deemed to remain a holder of such share until the name of the transferee is entered in the register book in respect thereof.

9. Shares in the company shall be transferred in the following form:

I, A. B., of ....., in consideration of the sum of ..... dollars paid to me by C. D., of....., do hereby transfer to the said C. D. the share (or shares) numbered.....standing in my name in the books of the .....company, to hold unto the said C. D., his executors, administrators and assigns, subject to the several conditions on which I held the same at the time of the execution thereof; and I, the said C. D., do hereby agree to take the said share (or shares) subject to the same conditions. As witness our hands, the.....day of .....A.D.....

10. The company may decline to register any transfer of shares made by a member who is indebted to it.

11. The transfer books shall be closed during the fourteen days immediately preceding the ordinary general meeting in each year.

## TRANSMISSION OF SHARES.

12. The executors or administrators of a deceased member shall be the only persons recognized by the company as having any title to his share.

13. Any person becoming entitled to a share in consequence of the death or insolvency of any member, may be registered as a member upon such evidence being produced as may from time to time be required by the company.

14. Any person who has become entitled to a share in consequence of the death or insolvency of any member, may, instead

of being registered himself, elect to have some person, to be named by him, registered as a transferee of such share.

15. The person so becoming entitled shall testify such election by executing to his nominee an instrument of transfer of such share.

16. The instrument of transfer shall be presented to the company, accompanied with such evidence as the directors may require to prove the title of the transferor, and thereupon the company shall register the transferee as a member.

#### FORFEITURE OF SHARES.

17. If any member fails to pay any call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as the call remains unpaid, serve a notice on him requiring him to pay such call, together with interest and any expenses that may have accrued by reason of such non-payment.

18. The notice shall name a further day on or before which such call, and all interest and expenses that have accrued by reason of such non-payment, are to be paid. It shall also name the place where payment is to be made (the place so named being either the registered office of the company or some other place at which calls of the company are usually made payable). The notice shall also state that in the event of non-payment at or before the time and at the place appointed, the shares in respect of which such call was made will be liable to be forfeited.

19. If the requisitions of any such notice as aforesaid are not complied with, any share in respect of which such notice has been given may, at any time thereafter, before payment of all calls, interest and expenses due in respect thereof has been made, be forfeited by a resolution of the directors to that effect.

20. Any share so forfeited shall be deemed to be the property of the company, and may be disposed of in such manner as the company in general meeting thinks fit.

21. Any member whose shares have been forfeited shall, notwithstanding, be liable to pay to the company all calls owing upon such shares at the time of the forfeiture.

22. An affidavit that the call in respect of a share was made and notice thereof given, and that default in payment of the call was made, and that the forfeiture of the share was made by resolution of the directors to that effect, shall be sufficient evidence of the facts therein stated, as against all persons entitled to such share; and such affidavit and the receipt of the company for the price of such share, shall constitute a good title to such share, and the certificate of proprietorship shall be delivered to the purchaser, and thereupon he shall be deemed the holder of such share, discharged from all calls due prior to such purchase and he shall not be bound to see to the application of the purchase money, nor shall his title to such shares be affected by any irregularity in the proceedings in reference to such sale.

#### CONVERSION OF SHARES INTO STOCK.

23. The directors may, with the sanction of the company, previously given in general meeting, convert any paid-up shares into stock.

24. When any shares have been converted into stock, the several holders of such stock may thenceforth transfer their respective interests therein, or any part of such interests, in the same manner and subject to the same regulations as and subject to which any shares in the capital of the company may be transferred, or as near thereto as circumstances admit.

25. The several holders of stock shall be entitled to participate in the dividends and profits of the company according to the amount of their respective interest in such stock; and such interest shall, in proportion to the amount thereof, confer on the holders thereof respectively the same privileges and advantages for the purpose of voting at meetings of the company, and for other purposes, as would have been conferred by shares of equal amount in the capital of the company; but so that none of such privileges or advantages, except the participation in the dividends and profits of the company, shall be conferred by any such

aliquot part of consolidated stock as would not, if existing in shares, have conferred such privileges or advantages.

#### INCREASE IN CAPITAL.

26. The directors may, with the sanction of a special resolution of the company previously given in general meeting, increase its capital by the issue of new shares, such aggregate increase to be of such amount, and to be divided into shares of such respective amounts, as the company in general meeting directs, or, if no direction is given, as the directors think expedient.

27. Subject to any direction to the contrary that may be given by the meeting that sanctions the increase of capital, all new shares shall be offered to the members in proportion to the existing shares held by them, and such offer shall be made by notice specifying the number of shares to which the member is entitled, and limiting the time within which the offer, if not accepted, will be deemed to be declined; and, after the expiration of such time, or on receipt of an intimation from the member to whom such notice is given that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company.

28. Any capital raised by the creation of new shares shall be considered as part of the original capital, and shall be subject to the same provisions with reference to the payment of the calls, and the forfeiture of shares on non-payment of calls, or otherwise, as if it had been part of the original capital.

#### GENERAL MEETINGS.

29. The first general meeting shall be held at such time, not being more than four months after the registration of the company, and at such place as the directors may determine.

30. Subsequent general meetings shall be held at such time and place as may be prescribed by the company in general meeting; and, if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year, at such place as may be determined by the directors.

31. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

32. The directors may, whenever they think fit, and they shall upon a requisition made in writing by not less than one-fifth in number of the members of the company, convene an extraordinary general meeting.

33. Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the company.

34. Upon the receipt of such requisition the directors shall forthwith proceed to convene an extraordinary general meeting. If they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other members amounting to the required number, may themselves convene an extraordinary general meeting.

#### PROCEEDINGS AT GENERAL MEETINGS.

35. Seven days' notice, at the least, specifying the place, the day and the hour of meeting, and, in case of special business, the general nature of such business shall be given to the members in manner hereafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting, but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

36. All business shall be deemed special that is transacted at an extraordinary meeting and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend and the consideration of the accounts, balance sheets, and the ordinary report of the directors.

37. No business shall be transacted at any general meeting, except the declaration of a dividend, unless a quorum of members is present at the time when the meeting proceeds to business; and such quorum shall be ascertained as follows, that is to say: If the persons who have taken shares in the company at the time of the meeting do not exceed ten in number, the quorum

shall be five; if they exceed ten, there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation, that no quorum shall in any case exceed twenty.

38. If within one hour from the time appointed for a meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week, at the same time and place; and if at such adjourned meeting a quorum is not present it shall be adjourned *sine die*.

39. The chairman (if any) of the board of directors shall preside as chairman at every general meeting of the company.

40. If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose some one of their number to be chairman.

41. The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

42. At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

43. If a poll is demanded by five or more members it shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the company in general meeting. In the case of an equality of votes at any general meeting, the chairman shall be entitled to a second or casting vote.

## VOTES OF MEMBERS.

44. Every member shall have one vote for every share up to ten; he shall have an additional vote for every five shares beyond the first ten shares up to one hundred, and an additional vote for every ten shares beyond the first hundred shares.

45. If any member is a lunatic or idiot, he may vote by his committee, *curator bonis*, or other logical curator or guardian.

46. If one or more persons are jointly entitled to a share or shares, the member whose name stands first in the register of members as one of the holders of such share or shares, and no other, shall be entitled to vote in respect of the same.

47. No member shall be entitled to vote at any general meeting unless all calls due from him have been paid, and no member shall be entitled to vote in respect of any share that he has acquired by transfer at any meeting held after the expiration of three months from the registration of the company, unless he has been possessed of the share in respect of which he claims to vote for at least three months previously to the time of holding the meeting at which he proposes to vote.

48. Votes may be given either personally or by proxy.

49. The instrument appointing a proxy shall be in writing, under the hand of the appointor, or if such appointor is a corporation, under its common seal, and shall be attested by one or more witness or witnesses. No person shall be appointed a proxy who is not a member of the company.

50. The instrument appointing a proxy shall be deposited at the registered office of the company not less than twenty-four hours before the time for holding the meeting at which the person named in such instrument proposes to vote; but no instrument appointing a proxy shall be valid after the expiration of twelve months from the date of its execution.

51. Any instrument appointing a proxy shall be in the following form:

Forms.

\_\_\_\_\_  
Company, Limited

I, \_\_\_\_\_, of \_\_\_\_\_, being a member of the \_\_\_\_\_ Company, Limited, and entitled to \_\_\_\_\_ vote (or \_\_\_\_\_ votes) hereby appoint \_\_\_\_\_ of \_\_\_\_\_ as my proxy, to vote for me and on my behalf at the (ordinary or extraordinary, as the case may be,) general meeting of the Company, to be held on the \_\_\_\_\_ day of \_\_\_\_\_ and at any adjournment thereof (or at any meeting of the company that may be held in the year \_\_\_\_\_).

As witness my hand, this \_\_\_\_\_ day of \_\_\_\_\_

Signed by the said \_\_\_\_\_ in the presence of \_\_\_\_\_.

#### DIRECTORS.

52. The number of the directors, and the names of the first directors, shall be determined by the subscribers of the memorandum of association.

53. Until directors are appointed the subscribers of the memorandum of association shall be deemed to be directors.

54. The future remuneration of the directors and their remuneration for services performed previously to the first general meeting shall be determined by the company in general meeting.

#### POWERS OF DIRECTORS.

55. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not by the foregoing Act, or by these articles required to be exercised by the company in general meeting, subject nevertheless, to any regulations of these articles, to the provisions of the foregoing Act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall in-

validate any prior act of the directors which would have been valid if such regulation had not been made.

56. The continuing directors may act notwithstanding any vacancy in their body.

#### DISQUALIFICATION OF DIRECTORS.

57. The office of director shall be vacated

- (a) if he holds any other office or place of profit under the company;
- (b) if he becomes insolvent;
- (c) if he is concerned in or participates in the profits of any contract with the company.

But the above rules shall be subject to the following exception:

That no director shall vacate his office by reason of his being a member of any company which has entered into contracts with or done any work for the company of which he is director; nevertheless he shall not vote in respect of such contract or work; and if he does so vote his vote shall not be counted.

#### ROTATION OF DIRECTORS.

58. At the first ordinary meeting after the registration of the company the whole of the directors shall retire from office; and at the first ordinary meeting in every subsequent year one-third of the directors for the time being, or if their numbers is not a multiple of three, then the number nearest to one-third, shall retire from office.

59. The one-third or other nearest number to retire during the first and second years ensuing the first ordinary meeting of the company shall, unless the directors agree among themselves, be determined by ballot; in every subsequent year the one-

third or other nearest number who have been longest in office shall retire.

60. A retiring director shall be re-eligible.

61. The company at the general meeting at which any directors retire in manner aforesaid shall fill up the vacated office by electing a like number of persons.

62. If at any meeting at which an election of directors ought to take place the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week, at the same time and place, and if at such adjourned meeting the places of the vacating directors are not filled up, the vacating directors, or such of them as have not had their places filled up, shall continue in office until the ordinary meeting in the next year, and so on from time to time until their places are filled up.

63. The company may, from time to time, in general meeting, increase or reduce the number of directors, and may also determine in what rotation such increased or reduced number is to go out of office.

64. Any casual vacancy occurring in the board of directors may be filled up by the directors, but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred.

65. The company, in general meeting, may, by a special resolution, remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead; the person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.

#### PROCEEDINGS OF DIRECTORS.

66. The directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, and determine the quorum necessary for the transaction of business. Questions arising at any meeting shall be decided by

a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A director may at any time summon a meeting of the directors.

67. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any such meeting the chairman is not present at the time appointed for holding the same, the directors present shall choose some one of their number to be chairman of such meeting.

68. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit. Any committee so formed, shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors.

69. A committee may elect a chairman of their meetings. If no such chairman is elected, or if he is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting.

70. A committee may meet and adjourn as they think proper. Questions arising at any meeting shall be determined by a majority of votes of the members present; and, in case of an equality of votes, the chairman shall have a second or casting vote.

71. All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

#### DIVIDENDS.

72. The directors may, with the sanction of the company in general meeting, declare a dividend to be paid to the members in proportion to their shares.

73. No dividend shall be payable except out of the profits arising from the business of the company.

74. The directors may, before recommending any dividend, set aside out of the profits of the company such sum as they think proper as a reserve fund to meet contingencies or for equalizing dividends, or for repairing or maintaining the works connected with the business of the company, or any part thereof; and the directors may invest the sum so set apart as reserve fund upon such securities as they may select.

75. The directors may deduct from the dividends payable to any member all such sums of money as may be due from him to the company on account of calls or otherwise.

76. Notice of any dividend that may have been declared shall be given to each member in manner hereinafter mentioned; and all dividends unclaimed for three years after having been declared may be forfeited by the directors for the benefit of the company.

77. No dividend shall bear interest as against the company.

#### ACCOUNTS.

78. The directors shall cause true accounts to be kept

- (a) of the stock-in-trade of the company;
- (b) of the sums of money received and expended by the company, and the matter in respect of which such receipt and expenditure takes place; and
- (c) of the credits and liabilities of the company.

The books of account shall be kept at the registered office of the company, and, subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed by the company in general meeting, shall be open to the inspection of the members during the hours of business.

79. Once, at the least, in every year the directors shall lay before the company in general meeting a statement of the income and expenditure for the past year, made up to a date not more than three months before such meeting.

80. The statement so made shall show, arranged under the most convenient heads, the amount of gross income distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expense of the establishment, salaries and other like matters. Every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting, and in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

81. A balance sheet shall be made out in every year and laid before the company in general meeting, and such balance sheet shall contain a summary of the property and liabilities of the company, arranged under the heads appearing in the form annexed to this Table, or as near thereto as circumstances admit.

82. A printed copy of such balance sheet shall, seven days previously to such meeting, be served on every member in the manner in which notices are hereinafter directed to be served.

#### AUDIT.

83. Once at least in every year the accounts of the company shall be examined, and the correctness of the balance sheet ascertained by one or more auditor or auditors.

84. The first auditor shall be appointed by the directors; subsequent auditors shall be appointed by the company in general meeting.

85. If one auditor only is appointed all the provisions herein contained relating to auditors shall apply to him.

86. The auditors may be members of the company; but no person is eligible as an auditor who is interested otherwise than as a member in any transaction of the company, and no director or other officer of the company is eligible during his continuance in office.

87. The election of auditors shall be made by the company at their ordinary meeting in each year.

88. The remuneration of the first auditors shall be fixed by the directors; that of subsequent auditors shall be fixed by the company in general meeting.

89. Any auditor shall be re-eligible on his quitting office.

90. If any casual vacancy occurs in the office of any auditor appointed by the company, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the same.

91. If no election of auditors is made in manner aforesaid, the Court may, on the application of not less than five members of the company, appoint an auditor for the current year, and fix the remuneration to be paid to him by the company for his services.

92. Every auditor shall be supplied with a copy of the balance sheet, and it shall be his duty to examine the same, with the accounts and vouchers relating thereto.

93. Every auditor shall have a list delivered to him of all books kept by the company, and shall at all reasonable times have access to the books and accounts of the company. He may, at the expense of the company, employ accountants or other persons to assist him in investigating such accounts, and he may in relation to such accounts, examine the directors or any other officer of the company.

94. The auditors shall make a report to the members upon the balance sheet and accounts, and in every such report they shall state whether in their opinion, the balance sheet is a full and fair balance sheet, containing the particulars required by these regulations, and properly whether, in their opinion, the balance sheet is a full and fair balance sheet, drawn up so as to exhibit a true and correct view of the state of the company's affairs, and in case they have called for explanations or information from the directors, whether such explanations or information have been given by the directors, and whether they have

been satisfactory; and such report shall be read, together with the report of the directors, at the ordinary meeting.

#### NOTICES.

95. A notice may be served by the company upon any member either personally or by sending it through the post in a pre-paid letter addressed to such member at his registered place of abode.

96. All notices directed to be given to the members shall, with respect to any share to which persons are jointly entitled, be given to whichever of such persons is named first in the register of members; and notice so given shall be sufficient notice to all the holders of such share.

97. Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post; and in proving such service it shall be sufficient to prove that the letter containing the notices was properly addressed and put into the post office.

#### TABLE B.

##### PART I.

Table of Fees to be paid to the Registrar by a company having a capital divided into shares:

For registration of a company whose nominal share capital does not exceed \$5,000 .....	\$ 50.00
For registration of a company whose nominal share capital exceeds \$5,000, but does not exceed \$10,000 .....	\$ 75.00

For registration of a company whose nominal share capital exceeds \$10,000, a fee of \$75.00 and also the following fees regulated according to the amount of nominal share capital that is to say:

For every one thousand dollars of nominal share capital or part of one thousand dollars after the first \$10,000 up to and including \$50,000 .....	\$ 1.00
For every one thousand dollars of nominal share capital or part of one thousand dollars after the first \$50,000 up to and including \$100,000 .....	.75
For every one thousand dollars of nominal share capital or part of one thousand dollars after the first \$100,000 up to and including \$250,000 .....	.50
For every one thousand dollars of nominal share capital or part of one thousand dollars after the first \$250,000 up to and including \$1,000,000 .....	.25
For every one thousand dollars of nominal share capital or part of one thousand dollars after the first \$1,000,000 .....	.15

For registration of any increase of capital made after the first registration of a company, the same fees as are payable for registering a new company with a nominal share capital amounting to the original share capital and proposed increased share capital of the first mentioned company, less the amount of the fee paid upon the original registration.

For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fees as are payable in respect of a new company of the same nominal capital.

For registering any list required to be forwarded to the Registrar pursuant to Section 37 .....	\$ 25.00
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For registering any document hereby registered or authorized to be registered, other than the memorandum of association and other than any list required to be forwarded to the Registrar pursuant to Section 37 .....	\$ 5.00
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For making a record of any fact hereby authorized or required to be recorded by the Registrar, a fee of .. \$ 5.00

PART II.

Where a company has only shares without nominal or par value the number of such shares as the company is authorized to issue shall be multiplied by the amount of five dollars and in the case of a company being in the main a mining or exploratory company by the amount of one dollar and the total amount so calculated shall for the purposes of this Table be the authorized capital of the company and the fee for incorporation shall be calculated accordingly under PART I: Provided that where the memorandum or articles of association state in manner provided by subsection (8) of Section 9 a maximum price or consideration at or for which such shares shall be issued the number of shares as aforesaid shall be multiplied by the amount of the maximum price or consideration instead of by the amount of five dollars or one dollar as the case may be.

PART III.

Where a company has shares both with and without nominal or par value, the fee for incorporation shall be \$50.00 if the total amount of authorized capital calculated according to PARTS I and II does not exceed \$5,000.00 and if the total amount so calculated exceeds \$5,000.00 the fee for incorporation shall be calculated in accordance with those Parts.

TABLE C.

Table of Fees to be paid to the Registrar by a company not having a capital divided into shares.

For registration of a company whose number of members as stated in the Articles of Association does not exceed 20 .....	\$ 50.00
For registration of a company whose number of members as stated in the Articles of Association exceeds 20 but does not exceed 100 .....	\$100.00

For registration of a company whose number of members as stated in the Articles of Association exceeds 100, but is not stated to be unlimited, the above fee of \$100.00 with an additional \$1.00 for every 50 members or less number than 50 members after the first 100.

For registration of a company in which the number of members is stated in the Articles of Association to be unlimited ..... \$250.00

For registration of any increase in the number of members made after the registration of the company in respect to every 50 members or less than 50 members of that increase ..... \$ 1.00

Provided that no company shall be liable to pay on the whole a greater fee than \$250 in respect of its number of members, taking into account the fee paid on the first registration of the company.

For registering the copy of the register required to be forwarded to the Registrar pursuant to Section 78 .. \$ 25.00

For registering any document hereby registered or authorized to be registered, other than the Memorandum of Association and other than the copy of the register required to be forwarded to the Registrar pursuant to Section 78 ..... \$ 5.00

For making a record of any fact hereby authorized or required to be recorded by the Registrar of Companies, a fee of ..... \$ 5.00

For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company.

## SECOND SCHEDULE.

## FORM A.

*Memorandum of Association of a Company limited by Shares.*

1st. The name of the company is "The Eastern Steam Packet Company, Limited."

2nd. The objects for which the company is established are "the conveyance of passengers and goods in ships or boats between such places as the company may from time to time determine, and the doing of all such other things as are incidental or conducive to the attainment of the above objects."

3rd. The liability of the members is limited.

4th. The capital of the company is .....dollars, divided into ..... shares of .....dollars each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses and Description of Subscribers	No. of Shares taken by each Subscriber.
1. John Jones, of....., merchant.....	200
2. John Smith, of ....., .....	25
3. Thomas Green, of....., .....	30
4. John Thompson, of ....., .....	40
5. Caleb White, of....., .....	15
Total shares taken .....	310

Dated the..... day of.....

Witness to the above signatures,

A.B., No.....Street.

## FORM B.

*Memorandum and Articles of Association of a Company limited  
by Guarantee and not having a Capital divided into Shares.*

## MEMORANDUM OF ASSOCIATION.

1st. The name of the company is the "Mutual London Marine Association, Limited."

2nd. The registered office of the company will be situated in .....

3rd. The objects for which the company is established are "the mutual insurance of ships belonging to members of the company, and the doing of all such other things as are incidental or conducive to the attainment of the above objects."

4th. Every member of the company undertakes to contribute to the assets of the company in the event of the same being wound up during the time that he is a member or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member, and the costs, charges and expenses of winding up the same, and for the adjustment of the rights of the contributories amongst themselves such amount as may be required not exceeding .....dollars.

We, the several persons whose names and addresses are subscribed are desirous of being formed into a company, in pursuance of this memorandum of association.

## NAMES, ADDRESSES, AND DESCRIPTION OF SUBSCRIBERS.

1. John Jones, of....., merchant
2. John Smith, of.....
3. Thomas Green, of.....
4. John Thompson, of.....

Dated the.....day of....., 19.....

Witness to the above signatures,

A. B., No.....Street.

ARTICLES OF ASSOCIATION TO ACCOMPANY PRECEDING  
MEMORANDUM OF ASSOCIATION.

1. The company, for the purpose of registration, is declared to consist of five hundred members.

2. The directors hereinafter mentioned may, whenever the business of the association requires it, register an increase of members.

DEFINITION OF MEMBERS.

3. Every person shall be deemed to have agreed to become a member of the company who insures any ship, or share in a ship, in pursuance of the regulations hereinafter contained.

GENERAL MEETINGS.

4. The first general meeting shall be held at such time, not being more than three months after the incorporation of the company, and at such place as the directors may determine.

5. Subsequent general meetings shall be held at such time and place as may be prescribed by the company in general meeting; and if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year, at such place as may be determined by the directors.

6. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

7. The directors may, whenever they think fit, and they shall, upon a requisition made in writing by any five or more members, convene an extraordinary general meeting.

8. Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the company.

9. Upon the receipt of such requisition, the directors shall forthwith proceed to convene a general meeting. If they do not

proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other five members, may themselves convene a meeting.

PROCEEDINGS AT GENERAL MEETINGS.

10. Seven days' notice at the least, specifying the place, the day, and the hour of meeting, and in case of special business, the general nature of such business, shall be given to the members in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting; but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

11. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance sheets, and the ordinary report of the directors.

12. No business shall be transacted at any meeting, except the declaration of a dividend, unless a quorum of members is present at the commencement of such business; and such quorum shall be ascertained as follows, that is to say: If the members of the company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten, there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation, that no quorum shall in any case exceed thirty.

13. If within one hour from the time appointed for the meeting a quorum of members is not present, the meeting, if convened upon the requisition of the members, shall be dissolved. In any other case it shall stand adjourned to the same day in the following week at the same time and place; and if at such adjourned meeting a quorum of members is not present, it shall be adjourned *sine die*.

14. The chairman (if any) of the directors shall preside as chairman at every general meeting of the company.

15. If there is no such chairman, or if at any meeting he is not present at the time of holding the same, the members present shall choose some one of their number to be chairman at such meeting.

16. The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

17. At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the company, shall be sufficient evidence of the fact, without proof if the number or proportion of the votes recorded in favour of or against such resolution.

18. If a poll is demanded in manner aforesaid, the same shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the company in general meeting.

#### VOTES OF MEMBERS.

19. Every member shall have one vote and no more.

20. If any member is a lunatic or idiot he may vote by his committee, *curator bonis* or other legal curator or guardian.

21. No member shall be entitled to vote at any meeting unless all moneys due from him to the company have been paid.

22. Votes may be given either personally or by proxies. A proxy shall be appointed in writing under the hand of the appointor, or if such appointor is a corporation, under its common seal.

23. No person shall be appointed a proxy who is not a member, and the instrument appointing him shall be deposited at the registered office of the company not less than twenty-four hours

before the time of holding the meeting at which he proposes to vote.

24. Any instrument appointing a proxy shall be in the following form:

The.....Company, Limited.

I,....., of ....., being a member of the ..... Company, Limited, hereby appoint ....., of ....., as my proxy, to vote for me and on my behalf at the (ordinary *or* extraordinary, *as the case may be*), general meeting of the company to be held on the.....day of....., and at any adjournment thereof to be held on the.....day of..... next, (*or* at any meeting of the company that may be held in the year.....).

As witness my hand this.....day of.....

Signed by the said....., in the presence of.....

#### DIRECTORS.

25. The number of the directors, and the names of the first directors, shall be determined by the subscribers of the memorandum of association.

26. Until directors are appointed, the subscribers of the memorandum of association shall for all the purposes of this Act be deemed to be directors.

#### POWERS OF DIRECTORS.

27. The business of the company shall be managed by the directors who may exercise all such powers of the company as are not hereby required to be exercised by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

## ELECTION OF DIRECTORS.

28. The directors shall be elected annually by the company in general meeting.

## BUSINESS OF COMPANY.

(Here insert rules as to mode in which business of insurance is to be conducted).

## ACCOUNTS.

29. The accounts of the company shall be audited by a committee of five members, to be called the audit committee.

30. The first audit committee shall be nominated by the directors out of the body of members.

31. Subsequent audit committees shall be nominated by the members at the ordinary general meeting in each year.

32. The audit committee shall be supplied with a copy of the balance sheet and it shall be their duty to examine the same with the accounts and vouchers relating thereto.

33. The audit committee shall have a list delivered to them of all books kept by the company, and they shall at all reasonable times have access to the books and accounts of the company; they may, at the expense of the company, employ accountants or other persons to assist them in investigating such accounts, and they may, in relation to such accounts, examine the directors or any other officer of the company.

34. The audit committee shall make a report to the members upon the balance sheet and accounts, and in every such report they shall state whether in their opinion the balance sheet is a full and fair balance sheet, containing the particulars required by these regulations of the company, and properly drawn up, so as to exhibit a true and correct view of the state of the company's affairs, and in case they have called for explanation or informa-

tion from the directors, whether such explanations or information have been given by the directors and whether they have been satisfactory, and such report shall be read together with the report of the directors at the ordinary meeting.

#### NOTICES.

35. A notice may be served by the company upon any member either personally or by sending it through the post in a pre-paid letter addressed to such member at his registered place of abode.

36. Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post; and, in proving such service, it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post office.

#### WINDING UP.

37. The company shall be wound up voluntarily whenever an extraordinary resolution, as defined by The Companies Act, is passed, requiring the company to be wound up voluntarily.

#### NAMES, ADDRESSES AND DESCRIPTIONS OF SUBSCRIBERS.

1. John Jones, of....., merchant
2. John Smith, of.....
3. Thomas Green, of.....
4. John Thompson, of.....
5. Caleb White, of.....

Dated the..... day of....., 19.....

Witness to the above signatures,

A. B., No.....Street.

## FORM C

*Memorandum and Articles of Association of a Company limited  
by Guarantee and having a Capital divided into Shares.*

## MEMORANDUM OF ASSOCIATION.

1st. The name of the company is "The Highland Hotel Company, Limited."

2nd. The registered office of the company will be situate in.....

3rd. The objects for which the company is established are "facilitating travelling in the province by providing hotels, and conveyances by sea and by land, for the accommodation of travellers, and the doing of all such other things as are incidental or conducive to the attainment of the above objects."

4th. Every member of the company undertakes to contribute to the assets of the company in the event of the same being wound up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member, and the costs, charges and expenses of winding up the same, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding.....dollars.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

## NAMES, ADDRESSES AND DESCRIPTIONS OF SUBSCRIBERS.

1. John Jones, of....., merchant
2. John Smith, of.....
3. Thomas Green, of.....
4. John Thompson, of.....
5. Caleb White, of.....

Dated the ..... day of ....., 19.....

Witness to the above signatures,

A. B., No..... Street.

ARTICLES OF ASSOCIATION TO ACCOMPANY PRECEDING  
MEMORANDUM OF ASSOCIATION.

1. The capital of the company shall consist of ..... dollars, divided into ..... shares of ..... dollars each.
2. The directors may, with the sanction of the company in general meeting, reduce the amount of shares.
3. The directors may, with the sanction of the company in general meeting, cancel any shares belonging to the company.
4. All the articles of Table A shall be deemed to be incorporated with these articles and to apply to the company.

We the several persons whose names and addresses are subscribed, agree to take all the number of shares in the capital of the company set opposite our respective names.

Names, Addresses and Descriptions of Subscribers	No. of Shares taken by each Subscriber.
1. John Jones, of ....., merchant.....	200
2. John Smith, of ....., .....	25
3. Thomas Green, of ....., .....	30
4. John Thompson, of ....., .....	40
5. Caleb White, of ....., .....	15
Total shares taken .....	310

Dated the ..... day of .....

Witness to the above signatures,

A. B., No..... Street.

## FORM D.

*Memorandum and Articles of Association of an unlimited  
Company having a Capital divided into Shares.*

## MEMORANDUM OF ASSOCIATION.

1st. The name of the company is "The Patent Stereotype Company."

2nd. The registered office of the company will be situated in.....

3rd. The objects for which the company is established are "the working of a patent method of founding and casting stereotype plates, of which John Smith, of....., is the sole patentee."

We, the several persons whose names are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

## NAMES, ADDRESSES AND DESCRIPTIONS OF SUBSCRIBERS.

1. John Jones, of....., merchant
2. John Smith, of.....
3. Thomas Green, of.....
4. John Thompson, of.....
5. Caleb White, of.....

Dated the..... day of....., 19.....

Witness to the above signatures,

A. B., No..... Street.

*Articles of Association to accompany the preceding  
Memorandum of Association.*

## CAPITAL OF THE COMPANY.

The capital of the company is..... dollars divided into..... shares of..... dollars each.

## APPLICATION OF TABLE A.

All the articles in Table A shall be deemed to be incorporated with these articles, and to apply to the company.

We, the several persons whose names and addresses are subscribed, agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses and Descriptions of Subscribers	No. of Shares taken by each Subscriber.
1. John Jones, of....., merchant.....	1
2. John Smith, of....., .....	5
3. Thomas Green, of....., .....	2
4. John Thompson, of....., .....	2
5. Caleb White, of....., .....	3
Total shares taken .....	13

Dated the..... day of.....

Witness to the above signatures,

A. B., No.....Street.

## FORM E

## THE COMPANIES ACT

(Section 37)

..... Limited.

Registered No. ....

To the Registrar of Companies:

In accordance with Section 37 of The Companies Act, on behalf of the above-named company I submit the following list of all persons who were members of the company on the 31st day

of December, 19 , together with other information in respect of the company required under that section.

The amount of the capital of the company is \$..... divided into

..... common shares of \$..... each  
 ..... non-redeemable preference shares of \$..... each  
 ..... redeemable preference shares of \$..... each  
 ..... no par value shares.

Since the commencement of the company and to the date of this summary the number of each class of shares taken is as follows:

COMMON SHARES.

Total number of shares taken ..... shares  
 Total number of shares issued for cash ..... shares  
 Total number of shares issued otherwise than for cash ..... shares  
 Total number of shares issued partly for cash ..... shares  
 Amount of calls made on each share \$ .....  
 Total amount of calls received \$ .....  
 Total amount of calls unpaid \$ .....  
 Total amount of shares forfeited \$ .....

NON-REDEEMABLE PREFERENCE SHARES.

Total number of shares taken ..... shares  
 Total number of shares issued for cash ..... shares  
 Total number of shares issued otherwise than for cash ..... shares  
 Total number of shares issued partly for cash ..... shares  
 Amount of calls made on each share \$ .....  
 Total amount of calls received \$ .....  
 Total amount of calls unpaid \$ .....  
 Total amount of shares forfeited \$ .....

REDEEMABLE PREFERENCE SHARES.

Total number of shares taken .....shares  
 Total number of shares issued for cash .....shares  
 Total number of shares issued otherwise than for cash .....shares  
 Total number of shares issued partly for cash .....shares  
 Amount of calls made on each share \$ .....  
 Total amount of calls received \$ .....  
 Total amount of calls unpaid \$ .....  
 Total amount of shares forfeited \$ .....  
 Total number of shares redeemed since last summary.....shares  
 Total number of shares issued and outstanding.....shares.

NO PAR VALUE SHARES.

Total number of shares taken .....shares  
 Total number of shares issued for cash .....shares  
 Total number of shares issued otherwise than for cash .....shares  
 Total amount paid on shares issued for cash .....\$ .....  
 Total amount of debt due from the company in respect of all mortgages and charges \$.....

DIRECTORS AT DATE OF THIS SUMMARY

NAMES	ADDRESSES	SHARES HELD

.....  
*A Director (An Officer, being the  
 ) (Solicitor) of the company.*

LIST OF PERSONS holding shares in .....Ltd., on the .....day of .....19....., and of persons who have held shares therein at any time during the year immediately preceding the said .....day of .....showing their names and addresses, and an account of the shares so held.

NAMES, ADDRESSES AND OCCUPATIONS					ACCOUNT OF SHARES					
Folio in Register Ledger Containing Particulars	SURNAME	CHRISTIAN NAME	ADDRESS	OCCUPATION	Shares held by existing members on the.....day of.....	Additional shares held by existing members during the preceeding year		Shares held during year by persons who have ceased to be members since last list was made		REMARKS
						Number	Date of Transfer	Number	Date of Transfer	

*THIRD SCHEDULE*

## MEETINGS OF CREDITORS AND CONTRIBUTORIES.

1. The meetings of creditors and contributories shall be held within twenty-one days after the date of the winding-up order, or within such further time as the Court may approve, unless a special manager has been appointed, in which case such meeting shall be held within one month from the date of such order, or within such further time as aforesaid.

2. The official receiver shall summon the meeting by giving not less than seven days' notice of the time and place thereof in *The Newfoundland Gazette* and in a local newspaper. Notice of such meeting shall also be sent by post to every person appearing by the company's books to be a creditor of the company and to every member of the company.

3. The official receiver shall also, as soon as practicable, send to each creditor mentioned in the company's statement of affairs, and to each person appearing from the company's books, or otherwise, to be a contributory of the company, a summary of the company's statement of affairs, including the causes of its failure, and any observations thereon which the official receiver may think fit to make; but the proceedings at any such meeting shall not be invalidated by reason of any summary or notice required by these rules not having been sent or received before the meeting.

4. The meeting shall be held at such place as is in the opinion of the official receiver most convenient for the majority of the creditors and contributories.

5. The official receiver, or some person nominated by him, shall be the chairman of the meetings.

6. A person shall not be entitled to vote as a creditor unless he has duly proved a debt to be due to him from the company, and the proof has been duly lodged before the time appointed for the meeting.

7. A creditor shall not vote in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained.

8. For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance (if any) due to him after deducting the value of his security. If he votes in respect of his whole debt he shall be deemed to have surrendered his security, unless the Court on application is satisfied that the omission to value the security has arisen from inadvertence.

9. A creditor shall not vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him, unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the company, as a security in his hands, and to estimate the value thereof, and for the purpose of voting, but not for the purpose of dividend, to deduct it from his proof.

10. It shall be competent to the official receiver, or to the liquidator, within twenty-eight days after a proof estimating the value of a security as aforesaid has been made use of in voting at any meeting, to require the creditor to give up the security for the benefit of the creditors generally on payment of the value so estimated, with an addition thereto of twenty per centum: Provided, that where a creditor has put a value on such security, he may, at any time before he has been required, to give up such security as aforesaid, correct such valuation by a new proof, and deduct such new value from his debt; but in that case such addition of twenty per centum shall not be made if the liquidator requires the security to be given up.

11. The chairman of the meeting shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the Court. If he is in doubt whether the proof of a creditor should be admitted or rejected he shall mark the proof as objected to, and shall allow the creditor to vote, subject to the vote being declared invalid in the event of the objection being sustained.

12. A creditor or contributory may vote either in person or by proxy.

13. Every instrument of proxy shall be in the prescribed form, and shall be issued by an official receiver, or by the liquidator of the company, and every written part thereof shall be in the handwriting of the person giving the proxy or of any manager or clerk or other person in his regular employment.

14. General and special forms of proxy shall be sent to the creditors and contributories with the notice summoning the meeting, and neither the name nor description of the official receiver or of any other person shall be printed or inserted in the body of any instrument of proxy before it is so sent.

15. A creditor or a contributory may give a general proxy to his manager or clerk, or any other person in his regular employment. In such case the instrument of proxy shall state the relation in which the person to act thereunder stands to the creditor or contributory.

16. A creditor or a contributory may give a special proxy to any person to vote at any specified meeting, or adjournment thereof

(a) for or against the appointment or continuance in office of any specified person as liquidator or member of the committee of inspection; and

(b) on all questions relating to any matter other than those above referred to and arising at any specified meeting or adjournment thereof.

17. A proxy shall not be used unless it is deposited with the official receiver before the meeting at which it is to be used.

18. Where it appears to the satisfaction of the Court that any solicitation has been used by or on behalf of a liquidator in obtaining proxies, or in procuring the appointment of a liquidator, except by the direction of a meeting of creditors or contributories, the Court shall have power if it thinks fit to order that no remuneration shall be allowed to the person by whom or on whose

behalf such solicitation may have been exercised, notwithstanding any resolution of the committee of inspection or of the creditors or contributories to the contrary.

19. A creditor or a contributory may appoint the official receiver to act in manner prescribed as his general or special proxy.

20. The chairman of the meeting may, with the consent of the meeting, adjourn the meeting from time to time and from place to place.

21. A meeting shall not be competent to act for any purpose except the election of a chairman, the proving of debts, and the adjournment of the meeting, unless there are present or represented thereat at least three creditors or contributories, or all the creditors or contributories if their number does not exceed three.

22. If within half an hour from the time appointed for the meeting a quorum of creditors or contributories is not present or represented, the meeting shall be adjourned to the same day in the following week at the same time and place, or to such other day as the chairman may appoint, not being less than seven or more than twenty-one days.

23. The chairman of the meeting shall cause minutes of the proceedings at the meeting to be drawn up, and fairly entered in a book kept for that purpose, and the minutes shall be signed by him or by the chairman of the next ensuing meeting.

24. No person acting either under a general or a special proxy shall vote in favour of any resolution which would directly or indirectly place himself, his partner or employer, in a position to receive any remuneration out of the estate of the company otherwise than as a creditor rateably with the other creditors of the company: Provided that where any person holds special proxies to vote for an application to the Court in favour of the appointment of himself as liquidator he may use the said proxies and vote accordingly.

## FOURTH SCHEDULE

## FORM A.

(Section 270)

## STATEMENT ON APPLICATION FOR REGISTRATION.

1. The name of the company is

(a) State  
province, state  
or country2. The company was incorporated in (a)  
on the            day of           , and is at the date  
hereof a valid and subsisting corporation, legally authorized to  
transact business under its charter (b) and regulations (c).(b) and (c)  
see Sec. 265.

3. The company was incorporated under (d).

(d) State  
statute, Act or  
ordinance.4. The business which the company will carry on in New-  
foundland is5. The company commenced business (*or* intends to com-  
mence business) in Newfoundland on the    day of    19   .6. The charter (b) and regulations (c) of the company, a  
verified copy of which is lodged herewith, consist of the fol-  
lowing documents:(e) For example  
letters patent,  
memorandum,  
articles, etc.

Date ..... Nature of Document (e).

(f) If no fixed  
period state  
"no limit".7. The period fixed by its charter for the duration of the com-  
pany is            years from            (f).(g) State  
definitely  
extent of  
liability.8. The liability of the members of the company under its  
charter is (g).(h) State dif-  
ferent classes,  
if any.9. The authorized share capital of the company is \$  
and is divided into (h)            shares of \$            each.The number of shares without nominal or par value authorized  
is

The subscribed capital at the date hereof is \$ .  
 The paid-up capital at the date hereof is \$ .  
 The shares in the company consist of (h) .

10. The full address of the head office or chief place of business outside Newfoundland is .

11. The full address of the head office or chief place of business in Newfoundland will be .

12. The directors of the company are (i) . (i) Full names, addresses and occupations.

13. (j) . (j) Other information.

IN WITNESS WHEREOF the common seal of the company (k) was hereunto affixed on the day of 19 .

The common seal of was hereunto affixed in the presence of

(k) If company has no seal, use the words "This statement was executed in the name of the company on the day of".

CANADA  
 NEWFOUNDLAND  
 (City or town)

TO WIT:

In the matter of The Companies Act, and of (l)  
 We, of  
 and of  
 do solemnly declare that we are respectively (m)  
 and of

(l) Name of company.

(m) State official positions.

(l) and that the particulars set forth in the foregoing statement of the said company pursuant to Part VI of The Companies Act are true and correct.

And we severally make this solemn declaration conscientiously believing it to be and knowing that it is of the same force and effect as if it had been made under oath and by virtue of the *Canada Evidence Act*.

Severally declared before  
me by the above-named  
declarants at \_\_\_\_\_,  
in the \_\_\_\_\_ of \_\_\_\_\_,  
this \_\_\_\_\_ day of \_\_\_\_\_  
19 \_\_\_\_\_.

.....  
A notary public, commissioner for oaths  
(or other person authorized by the  
law of the place to administer oaths or  
take affidavits or solemn declarations).

## FORM B.

(Section 270)

Statement in Lieu of Prospectus of \_\_\_\_\_, Limited.

<i>Information required to be stated</i>	<i>Statement</i>
(1) Particulars of the business which the company proposes to carry on, and the place where the business will be carried on.	
(2) Number of (shares) (debentures) which the company proposes to issue (a) for cash (b) for other consideration, for the purpose of carrying out the objects specified under paragraph (1).	
(3) Amount or estimated amount, if any, <i>If estimated,</i> which has been or will be <i>so state</i> paid in cash, shares, debentures or otherwise for:  (a) preliminary expenses;  (b) services rendered or to be rendered to the company;  (c) as commission for subscribing or agreeing to subscribe, or procuring or agreeing to procure, subscriptions for any shares mentioned in paragraph (2), or allowed or to be allowed as discount in respect of any debentures (or, in the case of a	

<p>pecially limited company, shares) mentioned in paragraph (2).</p>	
<p>(4) Particulars of any property purchased or acquired, or proposed to be purchased or acquired, by the company, and the title or interest therein acquired or to be acquired by the company.</p>	
<p>(5) Full name, address and occupation of any vendor of property to the company, and in the case of a promoter, the amount paid by him for the property, within the last two preceding years, and the amount (specifying separately the amount, if any, for goodwill) paid or payable in cash, shares, debentures or otherwise to him for the property.</p> <p>Where there is more than one separate vendor or the company is a sub-purchaser, the amount so paid or payable to each vendor: Provided that when the vendors or any of them are a firm, the members of the firm shall not be treated as separate vendors.</p>	
<p>(6) Where debentures are offered for subscription, particulars of the security which has been or will be created for those debentures, specifying the property (if any) comprised in the security, and the nature of the company's title to such property.</p>	
<p>(7) Particulars of any services under paragraph (3).</p>	

<p>(8) If the information is not stated above, the amount paid or payable to any promoter, with his full name and address, and the consideration for any such payment, and the amount in cash which he intends to subscribe or has subscribed for (shares in) (debentures of) the company or otherwise to contribute.</p>	
<p>(9) Full names, addresses and occupations <i>If proposed directors, of the directors or</i> <i>so state</i> proposed directors of the company and the remuneration paid or payable to them.</p>	
<p>(10) The amounts in cash which each of the said directors has subscribed or intends to subscribe for (shares in) (debentures of) the company or otherwise contribute.</p>	
<p>(11) Full particulars of the nature and extent <i>If proposed directors, of the interest of</i> <i>so state</i> every director or proposed director in the promotion of or in the property proposed to be acquired by the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all amounts paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become or to qualify him or by the firm in connection with the promotion or formation of the company.</p>	

(12) Names and addresses of the auditors of the company, if any.	
(13) Dates of and parties to every material contract, other than contracts entered into in the ordinary course of the business intended to be carried on by the company, or entered into more than two years before the filing of this statement.	
(14) Time and place at which the contracts or copies thereof may be inspected.	

We, the undersigned directors, hereby certify that the foregoing statement is to the best of our knowledge true and complete.

Dated this            day of            , 19    .

(Signatures).....  
 .....  
 .....

Witness:

(Name, address and occupation)

Note: The statement must be signed in the presence of a witness by every person named as a director or proposed director or by his agent authorized in writing. This form must be altered according as shares or debentures are to be issued.

FORM C.

(Section 271)

POWER OF ATTORNEY.

Know all men by these presents that  
 duly incorporated under \_\_\_\_\_ of the  
 doth hereby make, nominate, constitute and appoint  
 of \_\_\_\_\_ in the Province of Newfoundland  
 to act as the attorney of the said company for  
 the purpose of receiving service of process in all suits and pro-  
 ceedings against the said company within the Province of New-  
 foundland and of receiving all lawful notices; and doth hereby  
 declare that service of process in respect to such suits and pro-  
 ceedings and all such notices upon the said nominee shall be  
 legal and binding to all intents and purposes whatsoever; and  
 doth hereby waive all claims of error by reason of such service;  
 and doth hereby declare that this power of attorney is given  
 for the purpose of vesting in the said attorney all authority re-  
 quired to be vested in an attorney under The Companies Act;  
 and for all and every of the purposes aforesaid doth hereby give  
 and grant unto the said attorney full and absolute power and  
 authority to do all things necessary to be done in and about the  
 premises.

IN WITNESS WHEREOF the company has hereunto set its  
 corporate seal attested by the signatures of its \_\_\_\_\_ and  
 this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

(Corporate Seal)

.....  
*Signature.*

.....  
*Signature.*

## FORM D.

(Section 281)

Return of \_\_\_\_\_ Company, Limited, made  
up to the 31st day of December, 19 \_\_\_\_\_ .

- (a) Nominal share capital \$ \_\_\_\_\_ divided into  
shares of \$ \_\_\_\_\_ each.
- (b) Number of shares taken from the commencement of the  
company up to the date of the return \_\_\_\_\_ .
- (c) The amount called up on each share \$ \_\_\_\_\_ .
- (d) The total amount received from calls \$ \_\_\_\_\_ .
- (e) The total amount unpaid on calls \$ \_\_\_\_\_ .
- (f) The total number of shares forfeited \_\_\_\_\_ .
- (g) The total amount, if any, agreed to be considered as  
paid on shares which have been issued as fully paid up  
otherwise than in cash \$ \_\_\_\_\_ .
- (h) The names and addresses of the persons who at the date  
of the return are the directors of the company \_\_\_\_\_ .
- (i) The total amount of debt due from the company in re-  
spect of all mortgages and other charges \_\_\_\_\_ .
- (j) The full address of the head office, giving the name of  
the city or town and street and number \_\_\_\_\_ .
- (k) The full address of the chief place of business in New-  
foundland, giving the city or town and street and num-  
ber \_\_\_\_\_ .
- (l) The nature of the business or businesses carried on dur-  
ing the year ended December 31st last \_\_\_\_\_ .

- (m) Any other information which in the opinion of the Registrar should be filed in his office respecting the company.

If the company has issued only shares without any nominal or par value, delete clauses (a) to (g) and substitute:

- (a) Number of shares without nominal or par value outstanding at the date of the return .
- (b) Number of shares without nominal or par value issued since the date of the last return .

If the company has, in addition to shares with a par value, issued shares without any nominal or par value, insert the following clauses:

- (g-a) Number of shares without nominal or par value outstanding at the date of the return .
- (g-b) Number of shares without nominal or par value issued since the date of the last return .

Signed and presented for filing by

.....  
*Director (or secretary or other officer).*

Date                      19 .





## CHAPTER 55

### An Act Respecting Guarantees by Companies

**1.** This Act may be cited as The Companies (Guarantees) Act.

Short title.

**2.** Where any person has been appointed, or holds, or has any office or employment in the public service, and such person is required to give security by means of a surety or sureties for the due performance of the duties of such office or employment, the Lieutenant-Governor in Council, or the head of the department, or the person in whom is vested the discretion of determining the nature or amount of such security, may, in the exercise of such discretion, accept as security the guarantee of any company which complies with the conditions contained in this Act and the rules made thereunder; and may fix in each case the amount to be guaranteed.

The guarantee of a company may be accepted as security for performance of duties in public service.

**3.** Whenever security shall be ordered or required by the Supreme Court or a judge thereof for the due and faithful performance, by any person, of the office of administrator, trustee, receiver, or of any office of trust for the performance of which the Court or a judge may require security, or, in respect of any cause, proceeding, or matter pending before the Supreme Court, such security may be given by the guarantee of any company which complies with the conditions contained in this Act and the rules made thereunder.

The guarantee of a company may be accepted by the Supreme Court.

**4.** The conditions under which the guarantee of a company may be accepted under this Act, are as follows:

Qualifications of company.

- (a) the subscribed capital of the company shall not be less than two hundred thousand dollars;
- (b) the paid up capital shall not be less than one hundred thousand dollars;
- (c) the company shall file in the office of the Minister of Provincial Affairs a certified copy of the Act of In-

corporation, or charter, or letters patent, or articles of association, of such company, and a power of attorney from the company to its agent in this country under the seal of the company, and signed by the president and secretary or other proper officer thereof, together with an affidavit of the agent of the company in Newfoundland, or a notarial certificate certifying the authority of such president, secretary, or other officer;

- (d) the company shall obtain from the Lieutenant-Governor in Council, under the hand of the Minister of Provincial Affairs, a licence permitting the company to carry on business in Newfoundland.

Annual statement.

**5.** Such company shall, in the month of January in each year, file with the Minister of Provincial Affairs or the Registrar of Joint Stock Companies, if there be such an officer, a statement of its affairs; which statement shall contain a memorandum of the amount of guarantee or sureties given by the company by virtue of Sections 2 and 3 of this Act. Such statement shall be verified by the affidavit of the president, secretary, or other proper officer of the company, or by the agent of the company in Newfoundland.

Names of companies to be published.

**6.** The Minister of Provincial Affairs shall, on or before the 15th day of February in each year, publish a list of the companies licensed to do business under this Act.

Securities may be taken as heretofore.

**7.** Nothing in this Act shall preclude the Lieutenant-Governor in Council, or the Supreme Court, or a judge thereof, from ordering securities to be taken and given in the same manner as heretofore.

Lieutenant-Governor in Council may make rules.

**8.** The Lieutenant-Governor in Council may make rules for carrying into effect the objects of this Act, and such rules, when made and published in *The Newfoundland Gazette*, shall have the effect of law as if enacted herein.



## CHAPTER 56

### An Act Respecting Conditional Sales of Goods

1. This Act may be cited as The Conditional Sales Act. Short title.
2. In this Act Interpretation.
  - (a) "affidavit" includes statutory declaration;
  - (b) "affixed" as applied to goods means erected upon or affixed or annexed to land in such manner and under such circumstances as to constitute them fixtures;
  - (c) "building" includes a structure, erection, mine or work built, erected or constructed on or in land;
  - (d) "building materials" includes goods that become so incorporated or built into a building that their removal therefrom would necessarily involve the removal or destruction of some other part of the building and thereby cause substantial damage to the building apart from the value of the goods removed, but does not include goods that are severable from the land merely by unscrewing, unbolting, unclamping or uncoupling, or by some other method of disconnection, and does not include machinery installed in a building for use in the carrying on of an industry where the only substantial damage, apart from the value of the machinery removed, that would necessarily be caused to the building in removing the machinery therefrom is that arising from the removal or destruction of the bed or casing on or in which the machinery is set and the making or enlargement of an opening in the walls of the building sufficient for the removal of the machinery;
  - (e) "buyer" means a person who buys or hires goods by a conditional sale, and includes the heirs, executors, administrators, successors and assigns of that person;

(f) "conditional sale" means

(i) a contract for the sale of goods under which possession is or is to be delivered to a buyer and the property in the goods is to vest in him at a subsequent time on payment of the whole or part of the price or on the performance of any other condition, or

(ii) a contract for the hiring of goods under which it is agreed that the hirer will become or have the option of becoming the owner of the goods on compliance with the terms of the contract;

(g) "creditor" means a creditor of a buyer, whether an execution creditor or not, who becomes a creditor before the filing of the conditional sale or of a renewal statement, as the case may be, and, for the purpose of enforcing the rights of such creditors but not otherwise, includes a creditor suing on behalf of himself and other creditors, an assignee for the general benefit of creditors, a trustee under the *Bankruptcy Act* (Canada), and a liquidator of a company under the *Winding-up Act* (Canada) or under The Companies Act, without regard to the time when the creditor so suing becomes a creditor or when the assignee, trustee or liquidator is appointed;

(h) "goods" means chattels personal other than things in action or money, and includes emblements, industrial growing crops and things attached to or forming part of the land that are agreed to be severed before sale or under the contract of sale, and motor vehicles;

(i) "motor vehicle" means motor vehicle within the meaning of The Highway Traffic Act;

(j) "registrar" means the Registrar of Deeds;

(k) "registry" means the Registry of Deeds;

(l) "seller" means a person who sells or lets to hire goods

by a conditional sale and includes the heirs, executors, administrators, successors and assigns of that person.

3. Where possession of goods has been delivered to a buyer under a conditional sale, every provision contained therein whereby the property in the goods remains in the seller is, unless this Act is complied with, void as against a creditor and as against a subsequent purchaser or mortgagee claiming from or under the buyer in good faith for valuable consideration without notice and the buyer shall notwithstanding such provision be deemed as against any such person to be the owner of the goods.

When provision as to property in goods remaining in the seller is void.

4.—(1) A conditional sale of goods shall be evidenced by a writing, executed prior to or at the time of or within ten days after delivery of the goods by the buyer or his agent, giving a description of the goods by which they may be readily and easily known and distinguished, and stating the amount of the purchase price remaining unpaid or the terms and conditions of the hiring.

Contents of documents.

(2) The description of a motor vehicle in the writing evidencing a conditional sale shall include the serial number of the vehicle.

Description of motor vehicle.

(3) Subject to Section 22, the writing or a copy thereof shall be filed in the registry within thirty days from the date of its execution.

Time and place of filing.

(4) The registrar shall cause every conditional sale or copy thereof filed in the registry to be numbered, endorsed with a memorandum of the date, hour and minute of its filing, and indexed by entering in a register kept by him the names and addresses of the parties to the conditional sale, its registration number and the date of its filing and the names of the parties to each conditional sale shall be entered in the register alphabetically according to the name of the purchaser.

Index, etc.

5.—(1) Subject to Section 6, the filing of the conditional sale is not required where a conditional sale of manufactured goods is made by the manufacturer thereof and

Manufactured goods; filing not necessary in certain cases.

- (a) at the time of the delivery thereof to the buyer the goods have the name of the manufacturer plainly painted, printed, stamped or otherwise inscribed thereon or plainly attached thereto by a plate or similar device; and
- (b) the manufacturer maintains an office in the province where inquiry may be made and information procured concerning the sale of the goods.

Manufacturer to furnish certain information on request.

(2) Where a manufacturer who maintains an office referred to in paragraph (b) of subsection (1) fails to furnish to an applicant, within five days after receiving the application, a statement of the amount, if any, paid for the goods and the amount remaining unpaid, he shall not thereafter be entitled to rely on subsection (1).

Filing in case of goods brought into province.

**6.** Where goods are brought into the province and are subject to an agreement made or executed outside the province that provides that the right of property therein or the right of possession thereof, in whole or in part, remains in the seller notwithstanding that the actual possession of the goods passes to the buyer, then unless

- (a) the agreement contains such a description of the goods that they may readily and easily be known and distinguished; and
- (b) a copy of the agreement is filed in the registry within thirty days after the seller has received notice of the place to which the goods have been brought,

the seller is not entitled to set up any right of property in or right of possession of the goods as against a creditor or as against a subsequent purchaser or mortgagee claiming from or under the buyer in good faith for valuable consideration without notice and the buyer shall notwithstanding such agreement be deemed as against any such person to be the owner of the goods.

Failure to comply with Section 6.

**7.** Where a contract has been made outside the province with reference to goods not then in the province, by which, under the law governing the contract, the seller has, upon default in payment of the price or the insolvency of the buyer, a right of revendication or a preference for the price of the goods

sold or a right to a dissolution of the sale and to resume possession of the goods notwithstanding the possession of the buyer, and the goods are brought into the province, the seller, except in the case of an agreement that complies with Section 6 and is filed as thereby required, is not entitled to set up the right of revendication, the preference for the price or the right to a dissolution of the sale and to resume possession of the goods as against a creditor or as against a subsequent purchaser or mortgagee claiming from or under the buyer in good faith for valuable consideration without notice and the buyer shall notwithstanding such contract be deemed as against any such person to be the owner of the goods.

**8.** Where a seller of goods expressly or impliedly consents that the buyer may sell them in the ordinary course of business and the buyer so sells the goods, the property in the goods passes to the purchaser from the buyer notwithstanding the other provisions of this Act.

Sale to traders.

**9.** The seller shall deliver a copy of the conditional sale to the buyer within twenty days after the execution thereof and if, after request, he neglects or refuses so to do, a judge of the Supreme Court or a judge of a District Court may on summary application make an order for the delivery of a copy.

Delivery of copy of conditional sale to buyer.

**10.**—(1) Within five days after the receipt of a request from a person proposing to purchase the goods or from any actual or intending creditor of the buyer or from any other interested person, accompanied by a sufficient amount of money or postage stamps to pay the postage on a reply by registered letter, the seller shall furnish particulars of the amount remaining due to him and the terms of payment and in default he is liable to a penalty not exceeding fifty dollars.

Seller's duty to furnish particulars.

(2) The person making the request shall give a name and post-office address to which a reply may be sent and it is sufficient if the information is given by registered letter deposited in a post office within the prescribed time addressed to the name and post-office address so given.

Idem.

**11.**—(1) A conditional sale that has been filed in accordance with this Act ceases to be valid after the expiration of three

Renewal statements.

years from its filing as against a creditor and as against a subsequent purchaser or mortgagee claiming from or under the buyer in good faith for valuable consideration without notice, unless before the expiration of that period a renewal statement in Form 1 is filed in accordance with this section.

- Contents. (2) The renewal statement shall state the interest of the seller in the goods that are subject to the conditional sale and the amount unpaid on account of the purchase price or under the terms and conditions of the hiring and shall be accompanied by an affidavit of the seller or his agent or of one of the sellers or his or their agent stating that the renewal statement is true and that the conditional sale is not being kept in force for a fraudulent purpose or to defeat, delay or prejudice creditors of the buyer.
- Further renewal statements. (3) Unless a further renewal statement is filed in accordance with this section within three years from the filing of the first renewal statement and thereafter within three years from the filing of the last preceding renewal statement, the conditional sale ceases to be valid after the expiration of any such period to the extent provided in subsection (1).
- Mistakes. (4) Where a mistake is made in a renewal statement, an amended statement verified by affidavit referring to the former statement and specifying and correcting the mistake therein may be filed.
- Protection. (5) If before the filing of an amended statement a person, relying on the accuracy of the renewal statement as first filed, has in good faith made an advance of money or given valuable consideration to the buyer or has taken proceedings and incurred costs therein, the conditional sale, as to the amount so advanced or the valuable consideration given or costs incurred by such person, shall as against him stand good only for the amount stated in the renewal statement as first filed.
- Index, etc. (6) The registrar shall cause every renewal statement and every amended statement filed in the registry to be numbered, endorsed and indexed in the same manner as a conditional sale.

12.—(1) Where the seller retakes possession of the goods pursuant to a condition in the contract, he shall retain them for a month and the buyer may redeem them within that period by paying or tendering to the seller the amount then due on the contract price together with the actual costs and expenses of retaking and keeping possession or by performance or tender of performance of the condition upon which the property in the goods is to vest in the buyer and payment of such costs and expenses and thereupon the seller shall deliver up to the buyer possession of the goods so redeemed.

Redemption and resale where seller retakes possession.

(2) Where the goods are not redeemed within the period of one month, the seller may sell the goods at any time after the expiration of that period either by private sale at a fair market price or at public auction.

When seller may sell the goods.

(3) Where the seller retakes possession of the goods in accordance with subsection (1), his right is restricted to repossession and sale of the goods and any claim by him for the unpaid purchase price is by reason of the retaking of possession and sale fully paid and satisfied.

Restriction on repossession seller's recovery.

(4) Where the seller does not retake possession of the goods in accordance with subsection (1), he may bring an action against the buyer for the unpaid purchase money.

Seller may elect to bring action.

(5) Where a judgment is obtained in an action taken pursuant to subsection (4) and the goods or any of them are seized and sold under an execution issued pursuant to the judgment, the amount realized from the sale of the goods is, subject to subsection (10), in full satisfaction of the judgment and costs.

Where goods seized under execution.

(6) This section applies to all instalment sales whether effected by way of a conditional sale agreement or lien note or by way of agreement or arrangement made at the time of sale or subsequent thereto whereby the buyer gives to the seller a chattel mortgage or bill of sale covering the whole or part of the purchase price of the goods.

Application of section to certain transactions.

(7) Subsections (3), (4) and (5) do not apply to a case where the goods, before or after being repossessed by the seller, are by the wilful act of the buyer or by his neglect or otherwise

Non-application of certain subsections.

(a) destroyed; or

(b) damaged or unduly depreciated to such an extent that the seller's security is materially impaired.

Where accessory removed before repossession.

(8) Notwithstanding any other provision of this section, where a seller has retaken possession of the goods in accordance with subsection (1) and it is found that an accessory forming part of the goods was removed from the goods before they were repossessed and was not replaced by another accessory of the like kind and value, the seller may sue the buyer for

(a) the value of the accessory; or

(b) the amount by which the sum realized on the sale of the goods falls short of the value which the goods might have had if the accessory had not been removed and the amount of the proper fees, charges, claims and disbursements in connection with the repossession and sale,

whichever is the lesser.

Surplus on sale to go to buyer.

(9) Where the seller sells the goods under subsection (2) or (3) he shall pay over to the buyer the surplus, if any, remaining after the unpaid purchase price of the goods and the costs, if any, of the retaking and keeping possession and the sale have been satisfied.

Surplus on execution and sale to go to buyer.

(10) Where the goods or any of them are sold under an execution referred to in subsection (5), the surplus, if any, remaining after the judgment and costs referred to in that subsection have been satisfied shall be paid over to the buyer.

Application of section.

(11) This section applies notwithstanding any statute or law to the contrary and notwithstanding any agreement to the contrary whether the agreement was made before or after the coming into force of this section, and any provision of an agreement which is contrary to or conflicts with this section is not binding upon and may not be enforced by or against the parties thereto.

Certificate of discharge.

**13.—**(1) Upon payment or tender of a fee of one dollar and of the amount due in respect of the goods or upon performance

of the conditions of the sale and upon written demand delivered personally or by registered mail by the buyer or any other person having an interest in the goods, the seller shall sign and deliver personally or by registered mail to the person demanding it a certificate of discharge in Form 2 and an affidavit of an attesting witness of the execution thereof.

(2) Where for ten days after receipt of the demand referred to in subsection (1) the seller unreasonably fails to deliver the required certificate and affidavit he is liable to the person demanding it for the damages resulting from the failure. Failure to deliver.

(3) A conditional sale filed under this Act may be discharged in whole or in part by the filing in the registry of a certificate of discharge signed by the seller and accompanied by an affidavit of an attesting witness of the execution thereof. Filing of discharge.

(4) The registrar shall note the fact of the discharge against each entry in the books of the registry respecting the conditional sale and shall make a like notation upon the writing evidencing the conditional sale or copy filed in the registry and upon every renewal statement and amended statement with respect thereto filed in the registry. Entry.

(5) The registrar shall on request furnish a certificate of the entry of the discharge. Certificate of entry.

**14.—**(1) In this section “goods” means chattels personal capable of being affixed to land. Interpretation.

(2) This section does not apply in respect of building materials and ceases to apply in respect of other goods upon their becoming affixed to land in such manner as to constitute them building materials. Application of section.

(3) Subject to this section and notwithstanding The Registration of Deeds Act, where possession of goods is delivered to the buyer and the goods are affixed to land, they remain subject to the rights of the seller as fully as they were before being affixed. Goods affixed to land.

(4) In addition to complying with Section 4, and not later than thirty days after the commencement of the affixing of the Notice to be filed.

goods to the land, the seller or his agent shall sign and file in the registry a notice in Form 3 setting out

- (a) the name and address of the seller;
- (b) the name and address of the buyer;
- (c) a description of the goods by which they may readily and easily be known and distinguished;
- (d) a description of the land to which the goods are or are to be affixed, sufficient for the purpose of identification in the registry; and
- (e) the amount unpaid on account of the purchase price or under the terms and conditions of the hiring.

**Idem.**      (5) There shall be attached to the notice filed pursuant to subsection (4) a copy of the writing evidencing the conditional sale together with an affidavit of the seller or his agent in Form 4 verifying the notice.

**Entry.**      (6) Upon the filing of the notice pursuant to subsection (4) and the affidavit pursuant to subsection (5) the registrar shall make an entry of the notice in the books of record against the land affected.

**Effect of filing.**      (7) The filing of a notice pursuant to subsection (4) shall be deemed actual notice of the existence of the conditional sale and of the provisions thereof to every person who is an owner of the land described in the notice or of any interest in the land or who is a purchaser, lessee, mortgagee, or other encumbrancer of the land or of any interest in the land.

**Retaking possession.**      (8) The seller is not entitled to retake possession of the goods so affixed or remove them from the land unless he has given to each person who appears by the records of the registry to have an interest in the land a notice in writing of the intention to retake possession of and to remove the goods and unless each person so notified fails to pay the amount due and payable on the goods for a period of one month after the giving of the notice to him or for such longer period as a judge of the Supreme

Court or a judge of a District Court may fix on cause shown to his satisfaction.

(9) The notice specified in subsection (8) shall be signed by the seller or his agent and shall set out

Contents of notice.

- (a) the name and address of the seller;
- (b) the name and address of the buyer;
- (c) a description of the goods;
- (d) a description of the land to which the goods are affixed; and
- (e) the amount unpaid on account of the purchase price or under the terms and conditions of the hiring and the amount presently due and payable thereon,

and shall contain a demand that the amount so due and payable shall be paid on or before a day mentioned, not being less than one month after the giving of the notice, and a statement of the intention to take possession of and to remove the goods unless the amount due and payable thereon is paid within the time mentioned.

(10) Notice to any person pursuant to subsection (8) may be given by personal delivery to him or by mailing it by registered mail addressed to him at his last known address and where the notice is so mailed it shall be deemed to be given at the time when it would reach its destination in the ordinary course of mail.

Service of notice.

(11) Notice pursuant to subsection (8) may be given by such form of substituted service as a judge of the Supreme Court or a judge of a District Court may direct.

Idem.

(12) Each person having an interest in the land, whether registered or not, has a right as against the seller to pay the amount so due and payable within the time mentioned in the notice and thereupon the goods shall, subject to any remaining

Payment.

rights of the seller under the conditional sale, remain affixed to the land.

Idem.

(13) Where a person, other than the buyer, having an interest in the land pays the amount unpaid on account of the purchase price or under the terms and conditions of the hiring he may demand and receive from the seller an assignment of the conditional sale.

Removal  
of goods.

(14) The seller on becoming entitled to remove the goods from the land shall exercise his right of removal in such a manner as will cause no unnecessary damage to the land or to personal property situated thereon or put the owner, lessee or occupier of the land to no greater inconvenience than is necessarily incidental to the work of effecting the removal of the goods.

Entry.

(15) Upon receipt of a certificate of discharge in Form 2 signed by the seller and accompanied by an affidavit of execution of an attesting witness or, where a certificate of discharge has been filed under Section 13, upon receipt of a copy thereof certified by the registrar, the registrar shall make an entry of the discharge in the books of records against the land affected.

Partial  
discharge.

(16) In the case of a partial discharge, the form of the certificate may be varied accordingly and the registrar shall make an entry of the discharge in respect only of the goods and land to which the partial discharge extends.

Cancellation  
of entry.

(17) The registrar may cancel an entry of a notice filed pursuant to subsection (4) upon the application of the registered owner of the land if, after such notice to the seller as the registrar directs, the seller fails to show cause to the satisfaction of the registrar why the entry should not be cancelled.

Effect of  
cancellation.

(18) Upon the entry of a discharge under subsection (15) or (16) or the cancellation of an entry under subsection (17), subsections (3) and (7) cease to apply in respect of the goods and land to which the discharge or cancellation extends.

Expiry of  
time where  
registry closed.

**15.** Where under this Act the time for the filing of a document expires on a day on which the registry is closed, the filing,

so far as regards the time of filing, is valid, if made on the next following day on which the registry is open.

**16.**—(1) Where the attesting witness to a document to which this Act applies dies or leaves the province before making the affidavit of execution required by this Act or becomes incapable of making or refuses to make the affidavit, a judge of the Supreme Court or a judge of a District Court upon being satisfied as to the execution and attestation of the document may make an order permitting the filing of the document.

Proof of execution where witness not available.

(2) The order or a copy thereof shall be filed with the document.

Idem.

(3) Filing of the document under the order has the like effect as the filing thereof with the affidavit of execution otherwise required by this Act.

Effect.

**17.**—(1) In addition to any person authorized by law to take affidavits, the registrar may take the affidavit of any person under this Act.

Affidavits; registrar.

(2) No conditional sale or other document to which this Act applies shall be held to be defective or void on the ground that an affidavit required by this Act was taken and made before a solicitor for any of the parties to the conditional sale or other document or before a partner of the solicitor or before a clerk in the office of the solicitor.

Solicitor, etc.

(3) An affidavit required by this Act to be made by a seller may in the event of his death be made by his executor or administrator or by any of his next of kin or by an authorized agent of the executor or administrator.

Where seller dies.

(4) Where the seller or his agent is a corporation, any officer, employee or agent of the corporation may make any affidavit or statement under this Act on behalf of the corporation.

On behalf of corporation.

(5) Every affidavit made under this Act by an agent of a seller or by an executor or administrator or a next of kin or an authorized agent of an executor or administrator or by an officer, employee or agent of a corporation shall state that the deponent

Of agent, etc.

is aware of all the circumstances connected with the conditional sale and that he has a personal knowledge of the facts deposed to.

Execution by corporation.

(6) Where a document to which this Act applies is executed by a corporation, no affidavit of an attesting witness is required.

Rectification of omissions, etc.

**18.**—(1) A judge of the Supreme Court or a judge of a District Court, upon being satisfied that an omission to file a conditional sale, a notice required to be filed under Section 14 or renewal statement or amended statement within the time prescribed by this Act or that an omission or misstatement in a document filed under this Act was accidental or due to inadvertance or impossibility or other sufficient cause may, subject to the rights of other persons accrued by reason thereof, extend the time for filing or order the omission or misstatement to be rectified on any terms and conditions he directs.

Idem.

(2) An order under this section or a copy thereof shall be filed with the registrar who shall attach it to the document on file or tendered for filing and shall make the appropriate entries in the register.

Effects of defects, irregularities and omissions.

**19.** A document to which this Act applies shall not be invalidated or its effect destroyed by reason only of a defect, irregularity, omission or error therein or in the execution or attestation thereof unless, in the opinion of the court or judge before whom a question relating thereto is tried, the defect, irregularity, omission or error has actually misled some person whose interests are affected by the document.

Evidence.

**20.**—(1) A copy of a document filed under this Act, certified as such by the registrar, is receivable in evidence as *prima facie* proof for all purposes as if the original document were produced and also *prima facie* proof of the execution of the original document, according to the purport of the copy.

Idem.

(2) The registrar's certificate is receivable in evidence as *prima facie* proof of the date, hour and minute of the filing of the document.

(3) No proof is required of the signature or official position of the registrar in respect of any certificate produced as evidence under this section. Idem.

**21.**—(1) The registrar has the care and custody of the books and documents of record kept or filed under this Act. Custody of documents.

(2) During the regular office hours of the registry, any person may on filling out a requisition form indicating with reasonable certainty the object of search and on payment of the prescribed fee, inspect the books and documents in the registry relating to his stated object. Requisition for search; stamp fee.

(3) The registrar may require any person before entering the place where the books and records are kept to deposit at a place outside all pens or writing or marking instruments containing ink or moist or indelible colours, and to declare that he does not take in any writing or marking instrument except a soft black-lead pencil the marks of which may be readily erased. Prohibition of pens and ink.

(4) A person, not being a member of the Law Society of Newfoundland, who acts as a professional searcher, that is to say, a person who makes numerous and frequent searches on behalf of his clients, shall be required to obtain a certificate of approval from the Attorney General before being allowed to have free access to the books and records, and the Attorney General may withdraw the certificate of approval in his discretion. Certificate of approval of professional searcher.

(5) The Attorney General may before approving a professional searcher require him to sign an undertaking that he will not at any time, having requisitioned a search, avail of the opportunity to make search into matters not connected with the object mentioned in the requisition; and he may from time to time require the professional searcher to sign a declaration that he has not in fact, since he was first approved or since his last declaration, as the case may be, made any search not covered by a requisition and search fee. Undertaking of professional searcher.

(6) In the case of generalized searches by a professional searcher, where his object is to obtain lists of persons rather than to search in respect of known parties, the registrar, with the approval of the Attorney General, may from time to time fix a Generalized searches.

lump sum to be paid monthly, quarterly or yearly, in lieu of the fees prescribed for searches, by a professional searcher to cover all searches made by him in the registry.

Application to sales before Act comes into force.

**22.**—(1) Where a conditional sale was executed before this Act came into force the seller may file the conditional sale in the registry within ninety days after this Act came into force and after the expiration of that time this Act applies to that conditional sale as if it had been executed after this Act came into force.

Saving of fee.

(2) Where a conditional sale referred to in subsection (1) was filed under another Act and a fee paid for the filing, the sale shall be filed under this Act without payment of fee.

Fees.

**23.**—(1) The registrar shall collect and pay through the Department of Justice into the Consolidated Revenue Fund, the fees set forth in the Schedule.

Documents not to be registered unless fees paid.

(2) The registrar shall not register any document under this Act unless the fees prescribed in the Schedule have been paid.

FORM 1

(Section 11)

*Renewal Statement*

Statement of the interest of  
in the goods mentioned in the conditional sale between  
of the one part and  
of the other part and filed in the Registry of Deeds  
on the                      day of                      , 19                      , as  
No.                      , and in respect of which a renewal state-  
ment was last registered in the Registry of Deeds:

Date of Registration	Registration Number

and of the amount unpaid on account of the purchase price (or under the terms and conditions of the hiring).

The said \_\_\_\_\_ has not assigned the conditional sale (or the said \_\_\_\_\_ is the assignee of the conditional sale by virtue of an assignment thereof dated the day of \_\_\_\_\_, 19\_\_\_\_,) (or as the case may be).

The amount unpaid on account of the purpose price (or under the terms and conditions of the hiring) is \$ \_\_\_\_\_

*Signature of seller or assignee.*

*Affidavit.*

I, \_\_\_\_\_, of the \_\_\_\_\_ of \_\_\_\_\_, in the \_\_\_\_\_ of \_\_\_\_\_, make oath and say:

- 1. I am the seller named in the conditional sale mentioned in the foregoing (or annexed) statement (or the assignee of the seller named in the foregoing (or annexed) statement).
- 2. The said statement is true.
- 3. The conditional sale mentioned in the said statement is not being kept in force for a fraudulent purpose or to defeat, delay or prejudice creditors of the buyer.

SWORN BEFORE ME, etc. )  
)  
)  
)

## FORM 2

(Section 13)

*Certificate of Discharge*

I, \_\_\_\_\_, of the \_\_\_\_\_ of \_\_\_\_\_  
 in the \_\_\_\_\_ of \_\_\_\_\_,  
 certify that the conditional sale between  
 of the one part and \_\_\_\_\_ of the other part,

(a) which was filed (*or* in case the conditional sale has been renewed was last renewed) in the Registry of Deeds the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, as No. \_\_\_\_\_;

(b) in respect of which a notice was filed under Section 14 of The Conditional Sales Act in the Registry of Deeds as No. \_\_\_\_\_, against the following described land:  
*(Here insert description)*

is wholly discharged (*or*) is discharged in part as follows:

*(Here state the description of the goods in respect of which the conditional sale is discharged and the description of the land to which the goods are affixed).*

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

*Signature of Seller.*

Witness:

NOTE:—An affidavit of execution is required by Section 13.

## FORM 3

(Section 14)

*Notice of Conditional Sale*

Notice is hereby given under Section 14 of The Conditional Sales Act respecting a certain conditional sale evidenced by a



## SCHEDULE

## Fees to be paid under Section 23:

For registering all conditional sales and notices filed pursuant to subsection (4) of Section 14 when the amount of the purchase price remaining unpaid thereunder does not exceed one hundred dollars .....	\$1.00
When the amount of the purchase price remaining unpaid exceeds one hundred dollars .....	\$2.00
For filing a copy of an agreement pursuant to paragraph (b) of Section 6 .....	\$2.00
For filing a renewal statement .....	\$1.00
For filing an amended statement .....	\$0.50
For filing certificate of discharge or partial discharge .....	\$1.00
For filing any order of a judge of the Supreme Court or District Court .....	\$0.50
For every certificate by the registrar .....	\$1.00
For every search, consisting of an inspection of the books containing records or entry of documents relating to:	
(a) one person or corporation .....	;
(b) one piece of property, or an aggregate of property forming a chain of title .....	;
(c) one financial transaction .....	\$0.25
For every affidavit .....	\$0.25



## CHAPTER 57

### An Act to Provide for Ownership of Individual Units in Buildings.

1. This Act may be cited as The Condominium Act.

Short title.

2. In this Act

Interpretation.

- (a) "buildings" means buildings and structures included in a property;
- (b) "by-laws" means the by-laws made under Section 12;
- (c) "common elements" means the whole property with the exception of the units;
- (d) "corporation" means the corporation created upon the registration of a declaration;
- (e) "declaration" means the declaration specified in Section 4, and where the context so admits includes any amendments to such declaration;
- (f) "encumbrance" includes a mortgage or lien registered or capable of being registered in the Registry and a seizure or levy under attachment or execution of the property or a unit duly entered by the Sheriff in his office books, but does not include a lien conferred upon any authority or body under a statute of the province for rates, assessments or taxes of any description imposed on or in respect of any property;
- (g) "Minister" means the Minister of Justice;
- (h) "owner" means the owner of the freehold estate in the property or a unit, as the case may be, but does not include a mortgagee unless in possession;

- (i) "plan" means the plan which is registered in the Registry at the time of presentation for registration of the declaration;
- (j) "property" means the land with the buildings described in the declaration, and includes all interests appurtenant to the land and buildings;
- (k) "Registrar" means the Registrar of Deeds;
- (l) "Registry" means the Registry of Deeds and other documents established under The Registration of Deeds Act;
- (m) "regulations" means regulations made under this Act; and
- (n) "unit" means a part or individual parts of the property designed and constructed for independent use or enjoyment of any kind and designated as a unit in the declaration.

Administration. **3.** The Minister is charged with the administration of this Act.

Condominium. **4.** The owner of any property may subdivide that property into units with common elements pertaining to each unit by registering or having registered on his behalf at the Registry a declaration and plan and by filing therewith a certificate, all prepared in accordance with this Act and the regulations, and upon the registration of such declaration and plan each unit together with the common elements specified in the declaration as pertaining to that unit shall be a chattel real and may be held, conveyed, sold, mortgaged, leased or otherwise disposed of in the same manner as any other chattel real but subject always to the provisions of this Act.

Declaration. **5.—(1)** Every declaration shall be executed by the owner of the property and shall contain

- (a) a full description of the property and buildings;
- (b) a description of each unit, and a reference to the unit number on the plan;
- (c) a description of or reference to each common element and the percentage which

- (i) each common element is to relate to each unit,
  - (ii) all the common elements are, for the purposes of subsection (1) of Section 18, to relate to each unit, and
  - (iii) the owner of a unit is required to pay for the maintenance, repair and renewal of each common element;
  - (d) provisions relating to any limitations on use or special restrictions or obligations to be imposed on the owner of any unit or with respect to the unit or any common elements;
  - (e) a statement of intention that the property described under paragraph (a) of this subsection be governed by this Act; and
  - (f) such other matters or things as may be specified in the regulations.
- (2) Every plan to be registered at the Registry with the declaration shall Plan.
- (a) delineate the property and outline the buildings;
  - (b) show the location and the boundaries of each unit in the buildings, and specify a number by which each unit may be identified;
  - (c) show the location of each common element;
  - (d) contain a statement by
    - (i) a member of the Newfoundland Association of Architects,
    - (ii) a member of the Association of Professional Engineers of the Province of Newfoundland or a person licensed to practise under The Newfoundland Engineering Profession Act, or

(iii) a person entitled to practise as a land surveyor under The Land Surveyors Act,

that the contents of the plan are accurate; and

(e) contain such other matters or things as may be specified in the regulations.

Certificate.

(3) Every certificate to be filed in the Registry at the time of presentation for registration of the declaration and plan shall be the certificate of a barrister of the Supreme Court and shall contain statements

(a) that the person whose name appears in and executes the declaration as owner is the owner of the freehold estate in the property;

(b) that every person who holds an encumbrance over the property has received the notification with copy declaration and plan required by Section 6; and

(c) that all rates, real property taxes, assessments, charges and taxes of any description levied or imposed upon the owner and occupier of the property, or in respect of the property have been paid.

Additions to declaration.

(4) Subject to any general or specific limitation provided in the regulations, nothing in this section shall prevent an owner from incorporating within the declaration any matter or thing, or showing upon the plan such information, respecting the property, the units or common elements or affecting the owners of the units, if such matter, thing or information is pertinent to the creation or proper use of the units or relates to the mutual interests in the common elements or use thereof and does not conflict with any of the provisions of this Act.

Notification to encumbrancers.

**6.—(1)** Not less than thirty days prior to the presentation for registration of the declaration and plan, the owner shall notify in writing or cause to be notified in writing the holder of any encumbrance over the property of his intention to present the declaration and plan for registration and to send to such holder at the time of notification a copy of the declaration and plan.

(2) If a holder of any encumbrance to whom notice is required to be given under subsection (1) objects to the registration of the declaration and plan by filing in the Registry a written notice of objection before registration is effected, the declaration and plan shall not be accepted for registration, and if accepted prior to the act of registration of the declaration and plan shall be returned forthwith to the owner or person who presented the declaration and plan for registration on his behalf.

Objection to encumbrancers.

(3) Upon presentation for registration of a declaration and plan, there shall be filed with the Registrar a certified copy of the notification required to be given under subsection (1).

Notification to be filed.

(4) The Registrar shall not register a declaration and plan until the expiry of thirty days from the date of the notification required to be given under subsection (1) and in any event not after sixty days from such date.

Time limit for registration.

**7.—**(1) Subject to subsection (3), a declaration may be amended by registering in the Registry an amending instrument, with or without the registration of an amended plan or new plan, duly executed by the owners of every unit in the property, and the amendment shall bear the signature, as consentor, of every holder of an encumbrance over any unit and common element affected by the amendment.

Amendment of declaration.

(2) Where the owners of units in a property are unable to agree to the terms or form of amendment to the declaration or plan, or any holder of an encumbrance over a unit or common element is unwilling to consent to the amendment, an application, in the form of an originating summons, may be made to a judge of the Supreme Court for an order to dispense with the execution of the amending instrument by all the owners of the units or all the holders of encumbrances, and if after making due enquiry the judge is satisfied

No unanimity between persons affected.

- (a) that the amendment proposed is fair and reasonable, and is not prejudicial to the holder of any encumbrance who is unwilling to consent; and
- (b) that not less than eighty per centum of the owners of the units concur with the proposed amendment,

he may make an order dispensing with the execution of the amending instrument by those owners of units or holders of such encumbrances who do not occur with or consent to its terms.

Contents  
of order.

(3) An order made under subsection (2) shall specify the names of all persons who are required to execute the instrument and all persons whose signatures to the instrument are to be dispensed with.

Registration.

(4) An instrument amending the declaration may be registered if it is executed by not less than eighty per centum of the owners of the units and does not bear the signature as consenter of every holder of an encumbrance over any unit and common element, if an order of a judge of the Supreme Court made under subsection (2) dispensing with the appropriate executions and signatures is registered in the Registry at the same time as application for registration of the amending instrument is made and upon registration of the amending instrument and the order of the judge, the amending instrument shall have full force and effect as if executed and consented to by all the persons required to execute or consent under subsection (1).

Withdrawal  
from  
condominium.

**8.—(1)** Subject to subsection (3) any property which has been divided into separate units with common elements under this Act may be unified and withdrawn from the provisions of this Act if

- (a) there is registered in the Registry an instrument of withdrawal executed by all the owners of every unit and by the holder of every encumbrance over any unit and common element in the property; and
- (b) there is filed with the instrument of withdrawal a certificate of a barrister of the Supreme Court that all rates, real property taxes, assessments, charges and taxes of any description levied or imposed upon the owner and occupier of every unit or in respect of every unit have been paid.

Effect of  
withdrawal.

(2) Upon the registration of an instrument of withdrawal under subsection (1), this Act shall not apply to the property from the date of registration, and the property shall vest in the owners of

the units as tenants in common in the proportions set out in the instrument, and any encumbrances over any unit and the common elements shall attach to the property or any part thereof in the manner set out in the instrument.

(3) Subsections (2), (3) and (4) of Section 7 shall apply with the necessary modifications to an instrument of withdrawal under this section as they apply to an amending instrument under that section.

Application.

**9.—(1)** The Registrar shall keep in the Registry a book to be known as “the Condominiums Register” into which there shall be registered in the manner provided by this section all declarations, plans, amended plans, court orders, by-laws and other documents presented for registration and to be registered under this Act.

Condominiums Register.

(2) The Condominiums Register shall contain the time when the instruments referred to in subsection (1) are presented for registration, the situation of the property, the number of units, the name of the corporation, a description of the character of every document, the date of the declaration, amendment to or withdrawal of the declaration, as the case may be, and such other matters or things as may be prescribed by the regulations.

Contents of Register.

(3) Upon the registration of every declaration and plan in the Condominiums Register, the Registrar of Deeds shall

Duty of Registrar of Deeds.

- (a) open a file which shall be identified by a cross-reference to the appropriate entry in the Condominiums Register and maintain in such file the declaration and plan and all other documents registered under this Act; and
- (b) issue in the name of the corporation a certificate of registration under his hand showing the date of registration, the location of the property, the number of units, the folio number of the appropriate entry in the Condominiums Register and such other matters as may be prescribed in the regulations.

(4) Subject to this Act, The Registration of Deeds Act shall apply with the necessary modifications to the Condominiums

Application of The Registration of Deeds Act.

Register and to every instrument presented for registration under this Act, so however that

- (a) Sections 11 to 19 of that Act (which relate to the proving of instruments) shall apply only to the declaration and to the instruments referred to in subsection (1) of Section 7 and paragraph (a) of subsection (1) of Section 8; and
- (b) the obligations imposed by Sections 23 to 27 inclusive and Section 31 of that Act shall not apply insofar as they are at variance or are inconsistent with the provisions of this section.

Further respecting The Registration of Deeds Act.

(5) All instruments referred to in subsection (1) are deemed to be included among the deeds and other documents to which reference is made in subsection (1) of Section 6 of The Registration of Deeds Act, and may, notwithstanding any provision of that Act, be registered in the Condominiums Register in accordance with the provisions of this section and the regulations, and if so registered, nothing contained in Section 9 of that Act shall render them fraudulent or void for noncompliance with any of the provisions of that Act.

Deed of Conveyance of unit to be registered.

**10.**—(1) Ownership of a unit shall not pass to a person unless there is registered in the Registry the deed, conveyance, order or other instrument of conveyance or confirmation of title conveying or confirming the title of ownership to such person.

Copy of deed to be filed.

(2) When the deed, conveyance, order or other instrument referred to in subsection (1) is presented for registration in the Registry, it shall be accompanied by a copy executed or certified by the maker, and upon registration of the deed, conveyance, order or other instrument, the Registrar shall maintain the copy in the file opened pursuant to subsection (3) of Section 9.

Common elements.

**11.**—(1) The owner of a unit in a property shall hold each common element as a tenant in common with the owners of the other units in the property in the proportion which is specified in the declaration as the percentage which the common element is to relate to that unit.

(2) Subject to subsection (3), the ownership of a unit with its common elements are inseparable and any instrument or order purporting to separate or divide a unit from its common elements is void.

Indivisibility of unit and common elements.

(3) Subject to any limitation or restriction contained in the declaration, a unit with its common elements may be divided into smaller units with corresponding subdivisions of the common elements pertaining to that unit by the registration of an instrument amending the declaration in the manner provided for and subject to the provisions specified in Section 7.

Subdivision of units.

**12.** All rates, real property taxes, assessments, charges and taxes of any description, which may be levied or imposed by any body or authority under or by virtue of a statute of the province upon the owner or occupier of, or in respect of property which has been subdivided into separate units with common elements under this Act, shall from the date of registration of a declaration under this Act and during the time the property is subject to this Act be levied and imposed upon the owner or occupier of or in respect of every unit in the property and any assessment or levy which is based upon the value of real property shall be assessed and levied on the basis of the value of a unit together with the value of the percentage which the common elements relate to that unit.

Taxation.

**13.—(1)** The registration of a declaration and plan under this Act creates a corporation without share capital the members of which are the owners of the units and the object of which is to manage and maintain the property and the assets of the corporation.

Condominium corporation.

(2) Every corporation shall have a name which

Name of corporation.

(a) is indicative of the location of the property;

(b) shall end with the words "condominium corporation"; and

(c) is approved by the Registrar.

## Assets.

(3) The assets of the corporation shall be the common elements and such sums of money and other things as may be held by the corporation from time to time with respect to the common elements, and the members of the corporation shall share in the assets and liabilities in the proportion which is specified in the declaration as the percentage which each common element relates to the unit owned by the member.

## Duties.

(4) It shall be the duty of the corporation to maintain, repair and if necessary renew the common elements and for these purposes it shall have power to

(a) effect compliance by the owner of every unit with the provisions of this Act, the regulations, the declaration and the by-laws; and

(b) make any repairs or do any matter or thing which the owner of any unit is obliged to do with respect to the common elements and to recover from such owner as a debt due by him all costs incurred by it in effecting the obligation of such owner.

## General powers.

(5) The corporation shall have power to do all matters or things necessary for or incidental to the achievement or carrying out of the objects and duties of the corporation, and, without prejudice to the generality of the foregoing, to enter into any unit or part thereof to inspect and to carry out such repairs or make such replacements to or within that unit as are in the opinion of the corporation necessary to keep the property or common elements in good state of repair, with power to recover from the owner of the unit as a debt due by him the cost of those replacements and repairs in respect of which the obligation to maintain falls upon such owner.

## Actions respecting common elements.

(6) Any action with respect to, arising from or relating to any common element shall be brought by or against the corporation in its own name, and any judgment against the corporation is also a judgment against the owner of a unit at the time when the action against the corporation was raised for a portion of the judgment debt corresponding to the proportion which is specified in the declaration as the percentage which that common element relates to the unit.

(7) Subject to the terms of the by-laws, the affairs of the corporation shall be administered and managed by its members, with power to appoint factors, agents, solicitors and other persons to assist it in the administration and management of the property and the assets.

Affairs to be managed by all members.

(8) The Companies Act, paragraph (c) of Section 20 of The Interpretation Act and in so far as not inconsistent with the by-laws, paragraph (b) of the said Section 20 shall not apply to a corporation created under this Act.

Non-application of Acts and provisions.

(9) On the registration of an instrument of withdrawal under subsection (1) of Section 8 the corporation shall cease to exist, and

Dissolution of corporation.

- (a) any sums held by the corporation with respect to the common elements shall be used to pay any valid claims for the payment of money against the corporation; and
- (b) the remaining assets of the corporation, other than the common elements, shall be distributed among its members in the same proportion as the assets of the corporation are held.

**14.**—(1) The corporation may, on a resolution of not less than two-thirds of its members or such other fraction as is specified in the declaration, make by-laws not inconsistent with or repugnant to this Act, the regulations or the declaration

By-laws.

- (a) governing the use, maintenance, management and administration of the property and assets of the corporation;
- (b) respecting the use of any of the units for the purposes of preventing unreasonable interference with the use and enjoyment of the common elements and other units;
- (c) respecting the composition and appointment of a board of directors, fixing the terms of appointment and establishing rules of procedure, fixation of quorum and other matters deemed necessary for the proper functioning of such board;

- (d) respecting the voting rights of the members of the corporation;
- (e) specifying the functions and duties of the corporation and the board of directors;
- (f) providing for the assessment, collection and disbursement of contributions from owners of the units relating to the common elements;
- (g) respecting mutual insurance coverage on the property, units and common elements and the application of the proceeds of insurance; and
- (h) covering any other matter respecting the conduct and affairs of the corporation.

Filing of  
by-laws.

(2) When the by-laws are made by the corporation, they shall be registered with the Registrar of Deeds together with a certificate signed by not less than two-thirds of the members of the corporation, or such other fraction as is specified in the declaration

- (a) stating that the resolution referred to in subsection (1) has been made and that the persons subscribing the certificate concur with the by-laws as filed; and
- (b) specifying every member of the corporation.

Amendment  
and revocation  
of by-laws.

(3) By-laws made under this section may be amended or revoked by the corporation on a resolution of not less than two-thirds of its members or such other fraction as is specified in the declaration, and subsection (2) shall apply to the amendment or revocation of the by-laws as it applies to the by-laws.

Easements.

**15.—**(1) Upon the registration of a declaration and plan there shall be implied by way of covenant in respect of each unit in favour of and against the owner of such unit as the case may be

- (a) an easement of shelter and support by or of the common elements and by or of every unit capable of enjoying or providing shelter and support;

- (b) an easement for the provision and passage of wires, cables, pipes or ducts relating to water, drainage, sewage, electricity, heating, lighting and other services including telephone, radio and television services; and
- (c) a right in favour of the owner of the dominant tenement to enter and to permit any person acting for and on his behalf to enter upon the servient tenement for the purposes of repairing, replacing, renewing or restoring any part of the property or services affecting or interfering with the easements referred to in paragraphs (a) and (b).

(2) No easement or restrictive covenant in the declaration or by-laws shall defeat or be construed to defeat the covenants contained in subsection (1) or to affect the rights of any person or body entitled by any statute or law to enter the property or any unit thereof for the purpose of inspection, maintenance, repair or renewal of any part of the property or services affecting the property, the units or the common elements, and any provision in the declaration or by-laws which purports to provide otherwise shall be void.

Prohibition against contracting out.

**16.**—(1) The owner of every unit shall be bound by and shall comply with the terms, conditions, obligations and restrictions imposed on such owner by the declaration and by-laws.

Obligations of unit owners.

(2) If the owner of any unit fails to pay the share imposed on him by the declaration in respect of the maintenance, repair and renewal of any common element or any sum which he is required to pay under the declaration or by-laws or is deemed by this Act as a debt due by him, the amount unpaid shall constitute a lien on the interest of such owner, and such lien may be registered by the corporation as an encumbrance over the unit of such owner by the registration in the Registry of an instrument in a form and in the manner prescribed by the regulations.

Lien against the interest of unit owner.

(3) On the registration of an encumbrance under subsection (2), it may be enforced by the corporation in the same manner as a mortgage.

Encumbrance enforced as a mortgage.

Agreement covering prior encumbrances.

**17.—(1)** Prior to the registration of a declaration and plan under this Act, the owner of the property and the holder of an encumbrance affecting the property may enter an agreement as to how the encumbrance is to be divided among the units and common elements or is otherwise to be dealt with, and following the registration of the declaration, the holder of the encumbrance may register the agreement.

Time limit for registration.

(2) An agreement shall not be registered under subsection (1) unless it is presented for registration within thirty day after the registration of the declaration.

Effect of registration.

(3) Upon the registration of an agreement under subsection (1), the encumbrance against the property shall be released and the encumbrances created by the agreement over the individual units and common elements or otherwise shall take effect.

Priority.

(4) An agreement registered under subsection (1) may provide that any encumbrance created by the agreement shall be deemed to have been registered at a time not earlier than the time when the encumbrance in respect of the property was registered, and notwithstanding anything in The Registration of Deeds Act, the encumbrances created by the agreement shall be deemed to have been registered at the time specified in the agreement.

Effect of registration on prior liens.

**18.—(1)** In the absence of the registration of an agreement under Section 17, every encumbrance affecting the property prior to the registration of the declaration shall, without the necessity of registration of an instrument giving effect thereto, be deemed to attach proportionately to each unit and the common elements pertaining to each unit in the proportion which is specified in the declaration by virtue of the requirement of subparagraph (ii) of paragraph (c) of subsection (1) of Section 5 as being the percentage which all the common elements relate to the unit.

Priority.

(2) The encumbrances deemed to attach proportionately to each unit under this section shall release the encumbrance existing over the property prior to the registration of the declaration and plan and notwithstanding anything in The Registration of Deeds Act, such encumbrances shall be deemed to have been registered at the time when the encumbrance over the property was registered.

**19.**—(1) Where a duty imposed by this Act, the regulations, the declaration or the by-laws is not performed, the corporation, any owner, or any person having an encumbrance against a unit and the common elements pertaining to that unit may apply to the Supreme Court for an order directing the performance of the duty.

Application for order to require performance of duties.

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

Idem.

(3) Nothing in this section restricts the remedies otherwise available for failure to perform any duty imposed by this Act.

Saving.

**20.** Notwithstanding anything contained in this or any other Act, no future encumbrance shall be created or be effective against the property during the period that it remains subdivided into separate units with common elements under this Act.

Limitation against future liens.

**21.**—(1) The Lieutenant-Governor in Council may make regulations for the purpose of carrying the provisions of this Act into effect according to their true intent and for supplying any deficiency therein, and without limitation of the foregoing may make regulations

Regulations.

- (a) classifying properties by size, number of units or use for the purposes of the regulations;
- (b) respecting the declaration, its form, and for the purposes of paragraph (f) of subsection (1) of Section 5 specifying the contents of the declaration and matters or things to be included therein;
- (c) prescribing requirements as to the quality, form, substance and layout of the plan, the number of plans to be filed and regulating the matters or things to be included therein;
- (d) governing the Condominiums Register, the files to be opened by the Registrar and the duties of the Registrar and members of his staff;

- (e) respecting the by-laws, their form and content or either form or content including the prescription of fees to be paid on the filing of by-laws;
- (f) regulating the fees to be paid on registration of a declaration, instrument or other document presented and accepted for registration under this Act, which power shall include power to prescribe different fees for different documents and different fees for different classifications of property;
- (g) for the purposes of Section 9, prescribing the matters or things to be included in the Condominiums Register and in the certificate of registration issued under that section;
- (h) prescribing the size and form of all or any documents presented for registration and regulating the manner of registration; and
- (i) covering any matter necessary or advisable to implement the intention and purpose of this Act.

## Publication.

(2) Regulations made under this section shall be published in *The Newfoundland Gazette* and shall come into force on the date of publication or such later date as may be prescribed in the regulations and shall be laid before the Legislature within fifteen days after they are made if it is then in session, or if it is not then in session within fifteen days after the commencement of the next ensuing session.

## Proclamation.

**22.** This Act shall come into force on a date to be proclaimed by the Lieutenant-Governor in Council.



## CHAPTER 58

### An Act Respecting the Organization, Operation, Functions, Powers, Duties, Rights and Privileges of the Constabulary Force of Newfoundland.

#### SHORT TITLE.

1. This Act may be cited as The Constabulary Act.

Short title.

#### INTERPRETATION.

2. In this Act

Interpretation.

- (a) "Association" means
  - (i) an association limited to the force and having among its objects the improvement of conditions of service or remuneration, or both, of the members, and
  - (ii) an association which, by order of the Lieutenant-Governor in Council, is designated as an association for the purposes of this Act;
- (b) "force" means The Constabulary Force of Newfoundland reconstituted by this Act;
- (c) "member" means a member of the force and includes the Chief of Police and every other commissioned officer and every non-commissioned officer and man of the force;
- (d) "Minister" means the Minister of Justice or such other Minister of the Crown as may be designated by the Lieutenant-Governor in Council for the time being to administer this Act;

- (e) "officer" means a commissioned officer of the force;
- (f) "policeman" means any member of the force other than a commissioned officer;
- (g) "regulations" means regulations made under this Act;
- (h) "strike" means to strike as defined by The Labour Relations Act; and
- (i) "trade union" means union as defined by The Labour Relations Act referred to in paragraph (h), but does not include an Association.

#### ADMINISTRATION.

Administration. **3.** The Minister is charged with the administration of this Act.

#### CONSTITUTION AND ORGANIZATION.

Reconstitution of The Constabulary Force of Newfoundland. **4.—(1)** The Constabulary Force of Newfoundland referred to in The Constabulary Act, chapter 26 of The Revised Statutes of Newfoundland, 1952, and consisting of officers and other members, is reconstituted and continued, subject to appointments thereto under the provisions of this Act and to the other provisions of this Act, as a constabulary force in and for the province under the name of The Constabulary Force of Newfoundland.

Idem. (2) Without limitation of the generality of subsection (1), all persons who, immediately before the coming into force of this Act, were officers and other members in the force shall continue, subject to the provisions of this Act and to the provisions of any other Act, to be officers and members of the force in the capacities in which they were serving immediately before the coming into force of this Act.

Idem. (3) For the purposes of this Act, all the powers, authority, rights, protection and privileges which members had by law immediately before the coming into force of this Act shall, subject to this Act, continue in the members.

**5.** The Minister has, subject to Section 28, the general control and management of the force and of all matters connected therewith.

Minister to control force.

**6.** The headquarters of the force shall be in the City of St. John's or at such other place as the Lieutenant-Governor in Council from time to time designates.

Headquarters.

CHIEF OF POLICE AND OTHER OFFICERS.

**7.**—(1) The Lieutenant-Governor in Council may appoint a commanding officer of the force, to be known as the Chief of Police, and such other officers as the Lieutenant-Governor in Council deems fit and may prescribe their titles and duties.

Appointment of Chief of Police and other officers.

(2) The Chief of Police and other officers shall hold office during the pleasure of the Lieutenant-Governor in Council.

Officers to hold office during pleasure.

**8.** Subject to Section 28, the Chief of Police has, under the direction of the Minister, the control and management of the force and of all matters connected therewith.

Chief of Police to control force under Minister's direction.

**9.** The Chief of Police shall perform the duties assigned to him by, and is at all times subject to the control, orders and authority of, the Minister.

Duties of Chief of Police.

**10.** If there is no Chief of Police or the Chief of Police is absent from the headquarters of the force, the senior commissioned officer at the headquarters has, unless otherwise provided by the Lieutenant-Governor in Council, all the powers and shall perform all the duties of the Chief of Police.

Absence of Chief of Police.

OTHER MEMBERS OF THE FORCE.

**11.** The Lieutenant-Governor in Council may from time to time authorize the Chief of Police to appoint, by warrant under his hand,

Appointment of non-commissioned officers and men.

(a) (i) such number of policemen, and

- (ii) from among the policemen in the force, non-commissioned officers to the number and of such grades as the Lieutenant-Governor in Council prescribes; and
- (b) temporary supernumerary policemen at such rates of pay as are authorized by the Minister.

## OATHS.

Oaths to be taken by members of force.

**12.**—(1) Before entering upon the duties of his office every member shall take and subscribe the Oath of Allegiance and an oath of office in the following form:

“I, A.B., solemnly swear that I will faithfully, diligently and impartially execute and perform the duties required of me as a member of The Constabulary Force of Newfoundland, and will well and truly obey and perform all lawful orders and instructions that I receive as such, without fear, favour or affection of or towards any person. So help me God.”

Before whom oaths taken.

(2) The oaths prescribed in subsection (1) may be taken and subscribed by the Chief of Police before the Chief Justice or any one of the judges of the Supreme Court of Newfoundland or before the judge of a District Court or a magistrate, and may be taken and subscribed by any other member of the force before the Chief of Police or any of the persons before whom the Chief of Police may take and subscribe the oaths.

Retention of written oaths.

(3) The oaths subscribed under subsection (1) shall be retained by the Chief of Police as part of the records of his office.

## DUTIES.

Duties of force.

**13.** It is the duty of members of the force, subject to the orders of the Chief of Police, to

- (a) perform all police duties of any kind whatsoever that may be assigned to the force by the Minister from time to time;

- (b) act as wardens, inspectors, patrolmen, guides or in other like capacities if so appointed under any of the laws of Canada or of the province; and
- (c) perform such other duties and functions as are, from time to time, prescribed by the Lieutenant-Governor in Council or the Minister.

**14.** A certificate purporting to be issued by or under authority of the Chief of Police and stating that the person to whom it is issued is a member of the force is *prima facie* evidence in all courts in the province and in all proceedings therein of the fact of such statement.

Evidence of appointment.

CERTAIN OFFENCES.

**15.** Every member who, upon being discharged or dismissed, refuses or neglects forthwith to deliver up to the Chief of Police or to a commissioned officer, or to a member authorized to receive them, his clothing, arms, accoutrements and all property of the Crown in his possession as a member of the force is guilty of an offence and liable on summary conviction to a penalty of fifty dollars, and in addition shall pay the value of the articles not delivered up, and, in default of payment of such penalty or value, is liable to imprisonment for a period not exceeding three months.

Penalty on members of the force failing to deliver up clothing, arms, etc., on discharge.

**16.** Every person who unlawfully puts on or assumes the dress, name, designation or description of any member, or who gives or offers or promises to give to any member any bribe, pecuniary or otherwise, or who makes an agreement with any member to induce him in any way to forego his duty, or who concert or connives at any act whereby any of the regulations may be evaded, is guilty of an offence and liable on summary conviction, on the complaint of any member of the force, to a fine not exceeding one hundred dollars, or in default of payment to imprisonment for a period not exceeding six months, or to both such fine and imprisonment.

Unlawful use of uniforms, etc.; offering of bribes; evasion of regulations.

**17.** Every person who unlawfully disposes of, receives, buys or sells, or has in his possession without lawful cause, or refuses to deliver up when thereunto lawfully required, any vehicle,

Unlawful disposal of equipment, etc.

arms, accoutrements, clothing or other thing used for purposes of the force, is guilty of an offence and liable on summary conviction to a penalty of double the value thereof, and to a further penalty not exceeding fifty dollars, and, in default of payment of any such penalty, to imprisonment for a period not exceeding three months.

Obtaining admission to force and obtaining pay, etc., by misrepresentation.

**18.** Every person who, by concealing the fact of his having been dismissed from the force or by false or forged certificates or false representations, obtains admission into the force, or obtains any pay, gratuity or pension, is guilty of an offence and liable on summary conviction to a fine not exceeding fifty dollars, or in default of payment to imprisonment for a period not exceeding three months, or to both such fine and imprisonment.

#### CONCERNING TRADE UNIONS AND STRIKES.

Membership in trade unions forbidden.

**19.**—(1) A member shall not remain or become a member of any trade union or of any organization that is affiliated directly or indirectly with a trade union.

Strikes forbidden.

(2) A member shall not strike.

#### BARGAINING AND ARBITRATION.

Definition of Government Negotiator.

**20.**—(1) For the purposes of this Act "Government Negotiator" means the Minister or such other person authorized by the Lieutenant-Governor in Council to bargain on behalf of the province under this section, and the Government Negotiator is deemed, on behalf of the province, to be a party to the bargaining.

Bargaining.

(2) Subject to subsection (3), when the Lieutenant-Governor in Council is requested in writing by a majority of the members of the force to direct the Government Negotiator to act under the provisions of this section, the Lieutenant-Governor in Council shall so direct, and the Government Negotiator shall, within sixty days after receipt of the request by the Lieutenant-Governor in Council, subject to subsection (4), bargain with a bargaining committee of the members of the force, and shall make every reasonable effort to come to an agreement for the purpose of making, subject to the approval of the Lieutenant-

Governor in Council and, where required, the enactment by the province of the appropriate legislation or the making of the appropriate regulations, or both, an agreement in writing defining, determining and providing for remuneration, grievance procedures or working conditions of the members of the force, other than the Chief of Police, the Assistant Chief of Police and the Deputy Assistant Chief of Police.

(3) Where not less than fifty per centum of the members of the force belong to an Association, any request made under subsection (2) shall be made by that Association, and the provisions of subsection (2) shall apply to such request.

Where Association concerned.

(4) The members of a bargaining committee referred to in subsection (2) shall be members of the force, but, where subsection (3) applies, the members of the bargaining committee shall be members of the Association referred to in subsection (3), and, at all meetings held for the purpose of bargaining under this Act, the bargaining committee may be accompanied by two members of the Association who are members of the force and who shall attend in an advisory capacity only, but nothing herein contained shall be deemed to prevent the bargaining committee of an Association from containing any member or members of the force.

Composition of bargaining committee.

(5) A bargaining committee under this section may, in addition to any persons who may accompany it under subsection (4), be accompanied by one legal counsel and one other adviser, and the Government Negotiator may be accompanied by such officers of the Department of Justice or of any other Department or Departments of the Government of the province as he deems advisable.

Counsel.

(6) An agreement entered into under this section shall provide for the period for which the agreement is to remain in effect, and, notwithstanding any Act or law to the contrary, such agreement may provide for such period to be of a duration in excess of one year.

Duration of agreement.

**21.—**(1) Where, after bargaining under Section 20, the Government Negotiator or the bargaining committee, as the case may be, is satisfied that an agreement cannot be reached, he or

Board of arbitration.

it, as the case may be, may by notice in writing to the other party require all matters in dispute to be referred to a board of arbitrators, and such matters shall be settled by arbitration under this section.

- Number of arbitrators. (2) A board of arbitrators under this section shall consist of a chairman and two other arbitrators.
- Appointment of arbitrators. (3) Where notice is given under subsection (1), the parties concerned shall each appoint an arbitrator.
- Failure to appoint arbitrator. (4) Where either party refuses or neglects to appoint an arbitrator within thirty days after the date of the notice referred to in subsection (1), the Lieutenant-Governor in Council shall, upon the written request of the other party, appoint such other arbitrator, and the two arbitrators appointed under subsection (3) and this subsection shall agree upon and appoint a third arbitrator who shall be the chairman of the board of arbitrators.
- Idem. (5) If the two arbitrators referred to in subsection (4) fail to appoint the arbitrator who is to be the chairman of the board of arbitrators after seven clear days' notice in writing from either party so to do, the Lieutenant-Governor in Council shall, on the written request of either party, appoint such arbitrator.
- Date of notice. (6) Where both parties give notice under subsection (1) or (5), the date of the notice for the purpose of subsection (4) or (5), as the case may be, shall be the date of the first of such notices.
- Oath of arbitrators. (7) Each arbitrator shall, before entering upon the duties of his office, take and subscribe the following oath of office before any person authorized to administer oaths:

"I, A.B., make oath and say that I will faithfully, truly and impartially, to the best of my knowledge, skill and ability, execute and perform the duties of an arbitrator on the board of arbitrators appointed under The Constabulary Act to ..... and will not, except in the discharge of my duties, disclose to any person any of the evidence or other matter brought before the said Board. So help me God."

(8) If any arbitrator, including any arbitrator who is appointed chairman of a board of arbitrators, refuses to act, dies, resigns, or is for any reason unable to carry out his duties under this Act, the Lieutenant-Governor in Council is empowered to, and shall, upon the written application of either party, by order revoke the appointment of such arbitrator, and

Revocation of appointment of arbitrator; replacement of such arbitrator.

(a) if the arbitrator concerned is other than the chairman, the Lieutenant-Governor in Council shall, by order, direct the party concerned to appoint another arbitrator and such party shall within thirty clear days after the date of the order appoint such other arbitrator, provided, however, that if such party refuses or neglects to appoint such arbitrator within the time limited as aforesaid, the provisions of subsection (4) shall, *mutatis mutandis*, apply, except that, if the arbitrator who is to be chairman has already been appointed under that subsection, such last-mentioned arbitrator is, subject to this Act, to be chairman; and

(b) if such arbitrator is the arbitrator who was appointed as chairman, the provisions of subsections (4) and (5) respecting the appointment of the arbitrator who is to be chairman shall, *mutatis mutandis*, apply.

(9) The revocation of the appointment of an arbitrator under subsection (8) shall not impair the right of the remaining arbitrators to act in conjunction with the arbitrator appointed to replace the arbitrator whose appointment has been revoked, and, when an arbitrator is appointed pursuant to subsection (8), that arbitrator shall proceed as if he had been a member of the board of arbitrators originally appointed.

Revocation not to interfere with proceedings.

(10) The decision of the majority of the members of the board of arbitrators is the decision of the board.

Decision of board of arbitration.

(11) Each party shall assume its own costs of the arbitration proceedings and shall share the cost of the third arbitrator equally.

Costs.

(12) Any costs payable by the Government Negotiator under subsection (11) shall be paid out of the Consolidated Revenue Fund.

Idem.

Remuneration of members of board of arbitrators.

**22.** The Lieutenant-Governor in Council shall fix the remuneration of the members of the board of arbitrators and, if he orders the payment of such remuneration, fix and pay the remuneration of the Government Negotiator.

Commencement and termination of arbitration proceedings.

**23.** The board of arbitrators shall commence the arbitration proceedings within thirty days after it is constituted and shall deliver the decision or award within sixty days after the commencement of the arbitration proceedings, but this latter period may be extended by written agreement of the parties concerned, in which event the decision or award shall be delivered within that extended period.

Duration of decision or award of board of arbitrators.

**24.** The board of arbitrators shall, in its decision or award, provide for the period for which the decision or award is to remain in effect, and, notwithstanding any Act or law to the contrary, such decision or award may provide for such period to be of a duration in excess of one year.

Effect of agreement or award.

**25.** Every agreement made under Section 20 and every decision or award of a board of arbitrators under Section 21 is subject to the approval of the Lieutenant-Governor in Council as provided for in Section 27 and, where required, the enactment by the province of the appropriate legislation or the making of the appropriate regulations, or both.

Duration of agreements, decisions and awards.

**26.** Subject to Section 27, every

- (a) agreement made under Section 20 shall remain in effect for the period provided for under subsection (6) of that section; and
- (b) decision or award made under Section 21 shall remain in effect for the period provided for under Section 24,

and, notwithstanding any Act or law to the contrary, shall remain in effect after such period until replaced by a new agreement, decision or award, as the case may be:

Provided, however, that

- (c) either party to bargaining that has resulted in an agreement, decision or award may, at any time after a date

not sooner than three months before the expiration of the period referred to in paragraph (a) or (b), as the case may be, proceed under Section 20 or 21 for a new agreement, decision or award, to take effect not sooner than immediately upon the expiration of the period, but not with retroactive effect; and

- (d) if both parties to bargaining that has resulted in an agreement, decision or award agree in writing, either party to such bargaining may at any time during the period referred to in paragraph (a) or (b), as the case may be, proceed under Section 20 or 21 for a new agreement, decision or award, to take effect before the expiration of such period, but not with retroactive effect.

**27.** The Lieutenant-Governor in Council may approve any agreement, decision or award referred to in Section 25

Approval of Lieutenant-Governor in Council in respect to agreements, decisions or awards.

- (a) as made under Section 20 or Section 21, as the case may be; or
- (b) subject to such qualifications, modifications and additions thereto or deletions therefrom as he may prescribe,

and such agreement, decision or award as so approved is, subject, where required, to the enactment by the province of the appropriate legislation or the making of the appropriate regulations, or both, binding upon the parties thereto.

REGULATIONS.

**28.**—(1) The Lieutenant-Governor in Council may make such regulations not inconsistent with this Act as he deems necessary or advisable for the more effective carrying out of the purposes of this Act according to its true spirit, intent and meaning and for dealing with any matters for which no express provision has been made or in respect of which only partial or imperfect provision has been made, and, without prejudice to the generality of the foregoing, may make regulations

Regulations.

- (a) providing for the appointment, governing, regulating, arming, clothing, equipping, lodging and paying of,

making of allowances to and providing of medical attention, by the appointment and paying of medical officers or otherwise, for, the members;

- (b) regulating the residence, classification, rank, service, instruction and distribution of the force;
- (c) providing for the establishment of a trust fund or trust funds into which such
  - (i) fines and forfeitures paid by members under this Act or the regulations,
  - (ii) fines, fees, commissions or other sums earned by or awarded or granted to members in connection with the performance of their duties, over and above their regular pay and allowances, and
  - (iii) other sums

as, and to the extent that, the Lieutenant-Governor in Council may specify shall be paid, and prescribing how any such fund may be used or expended for the benefit of members, former members, dependents of members or of former or deceased members, or any of them;

- (d) subject to subsection (5), providing for the orderly, disciplined, sober, honest, impartial, loyal, efficient, speedy, conscientious, obedient, secure, courteous and just performance of duties by members;
- (e) subject to subsection (5), providing that every member who fails to comply with or otherwise contravenes any of the provisions of regulations made under this section is guilty of an offence;
- (f) subject to subsection (5), prescribing what offences against regulations may be tried under The Summary Jurisdiction Act and what offences may be dealt with under regulations made under the provisions of paragraph (h);

- (g) prescribing penalties for failing to comply with or otherwise contravening any of the provisions of regulations made under this section, provided that, for an offence which may be dealt with under regulations made under paragraph (h), the penalty or penalties that may be imposed shall not exceed those specified in that paragraph;
- (h) subject to subsections (4) and (6), providing for the summary trial, by a member or members, designated in the regulations by rank, name or otherwise howsoever, of members charged with offences against the regulations, providing for the compulsory attendance of the accused and of witnesses and for administering oaths and, subject to any specific restricted penalty that may be prescribed in the regulations made under paragraph (g), providing for the imposition, upon conviction of any such member for an offence, of
  - (i) a fine not exceeding one hundred dollars,
  - (ii) suspension without pay,
  - (iii) reduction in rank,
  - (iv) loss of seniority,
  - (v) reprimand, or
  - (vi) dismissal, or
  - (vii) any two or more of the penalties referred to in subparagraphs (i), (ii), (iii), (iv), (v) and (vi);
- (i) subject to subsection (9), providing for the review, confirmation, mitigation or remittance, by the Minister, of any penalty imposed under regulations made under paragraph (h) and for the quashing, by the Minister, of a conviction or the ordering, by the Minister, of a new trial in respect of any trial held under the said paragraph;
- (j) providing for the maximum period or periods, and the conditions of leave of absence, including sick leave, which may be allowed to members; and

(k) respecting any matter, whether of any of the foregoing kinds or not, necessary or advisable to carry out effectively the intent and purpose of this Act.

Penalty.

(2) Every person who is guilty of an offence under the regulations is liable to the penalty prescribed therefor by the regulations.

Publication and date of coming into force.

(3) Regulations made under subsection (1) shall be published in *The Newfoundland Gazette* and shall have effect from the date of publication or from such later date as may be stated in the regulations, and the regulations shall be laid before the Legislature within fifteen days after they are made, if the Legislature is then in session, and, if it is not, then within fifteen days after the commencement of the next ensuing session.

Trial by ordinary courts.

(4) An acquittal or conviction of any member under regulations made under paragraph (h) of subsection (1) shall not be a bar to proceedings in any court in respect of an offence arising out of the same facts.

Provision for certain offences to be contained in regulations.

(5) Without limiting the generality of subsection (1), the regulations shall provide that a member shall not

- (a) disobey or refuse to obey the lawful command of, or strike or threaten to strike, any other member who is his superior in rank or is in authority over him;
- (b) abuse or maltreat any other member who is his inferior in rank or over whom he is in authority;
- (c) conduct himself by word or act in a traitorous or disloyal manner in respect of Her Majesty;
- (d) directly or indirectly receive or solicit any gratuity or reward without permission of the Chief of Police, or any bribe;
- (e) wear the emblem, mark or insignia of any political party or in any way manifest political partisanship;
- (f) overhold any complaint;

- (g) conduct himself by word or act in a mutinous or insubordinate manner;
- (h) fail to account for, improperly withhold, misappropriate or misapply any public money or property, any money or property levied under execution or taken from any prisoner, or any property not being his own and coming into his possession in the course of his duty or by reason of his being a member;
- (i) divulge any matter or thing that it is his duty to keep secret;
- (j) make an anonymous complaint to the Chief of Police, or any Minister of the Crown, or any member of the House of Assembly;
- (k) wilfully or through negligence or connivance allow a prisoner to escape;
- (l) be cruel, harsh or unnecessarily violent to any prisoner or other person;
- (m) leave any post on which he has been placed as sentry, guard or escort, or be asleep while on such duty;
- (n) desert or absent himself from duty without leave; or
- (o) attempt to commit, or aid, abet, counsel or procure any other person to commit any act specified in this subsection,

and provision shall be made under paragraph (e) of subsection (1) with respect to constituting as an offence any failure to comply with or other contravention of any provision referred to in any paragraph of this subsection, and provision shall be made under paragraph (f) of subsection (1) that any such offence shall be dealt with under the provisions of paragraph (h) of subsection (1).

Concerning regulations made under paragraph (h) of subsection (1).

(6) Without limiting the generality of paragraph (h) of subsection (1), regulations made under that paragraph may, and shall, contain provisions for the preparation and service, subject to subsection (7), of written charges.

Concerning form of charges and trial thereof.

(7) In respect to any offence dealt with under the provisions of paragraph (h) of subsection (1),

- (a) a written charge may allege more than one offence and shall contain
  - (i) a separate statement of each offence of which the accused is charged,
  - (ii) a statement of the particulars of the act, omission, conduct, disorder or neglect constituting each offence, and
  - (iii) a statement of the place of trial and the date and time thereof, which shall not be less than forty-eight hours after service of the charge on the accused;
- (b) at the time and place appointed in the written charge, the accused shall be brought before the member or members who are to try the offence;
- (c) the accused may plead guilty or not guilty, and where he refuses to plead, he shall be deemed to have pleaded not guilty;
- (d) an accused may be represented and assisted at his trial by legal counsel or another member or other person;
- (e) an accused is not compelled to testify at his trial, but he may give evidence under oath, and an accused who has not given evidence under oath shall, at the conclusion of the case for the prosecution, be given an opportunity of making a statement to the presiding member or members;

- (f) an accused may call witnesses on his own behalf and may cross-examine any witnesses called for the prosecution;
- (g) the rules of evidence shall be the same as those followed in proceedings under The Summary Jurisdiction Act; and
- (h) the member or members presiding at the trial shall cause the evidence of the witnesses to be taken down and transcribed and a copy of the transcript shall be furnished to the accused, if he so requests, within forty-eight hours after the passing of sentence.

(8) Subject to the regulations, every member presiding at a trial referred to in paragraph (h) of subsection (1) and the Minister for the purposes of paragraph (i) of subsection (1) is hereby vested with all the powers that are or may be conferred on a Commissioner by or under The Public Enquiries Act, and

Concerning certain powers of persons presiding at trials, etc.

- (a) the member or members, as the case may be, authorized under this Act to preside at a trial referred to in paragraph (h) of subsection (1); and
- (b) the Minister for the purposes of paragraph (i) of subsection (1)

shall be deemed to be an "investigating body" for the purposes of The Evidence (Public Investigations) Act.

(9) Any member concerning whom any proceedings are taken under regulations made under paragraph (i) of subsection (1) may be represented and assisted in such proceedings by legal counsel or another member or other person.

Member entitled to be represented where penalty under review, etc.

CONCERNING RECOVERY OF CERTAIN PAYMENTS BY CROWN.

**29.**—(1) Notwithstanding anything contained in any other statute or law, where

- (a) any pay or allowance is paid a member while absent from his duties; or

Salary and medical and hospital expenses paid by Crown in case of injury recoverable in certain cases.

(b) subject to subsection (3), medical or hospital expenses are paid or medical or hospital services are provided from public funds in respect of a member,

because of an injury or disability caused or contributed to by or resulting from the fault or neglect or other wrongful act or omission of another person, the amount so paid in respect of pay, allowance, medical and hospital expenses or any of them and the cost of the medical and hospital services or either of them so provided is a debt due by that other person or by his estate if he is dead to Her Majesty in right of the province and may be recovered by Her Majesty's Attorney General for Newfoundland and every action or proceeding for the recovery of the debt shall be instituted in the name of Her Majesty's Attorney General for Newfoundland.

Where contributory negligence exists portion only recoverable.

(2) If, in any action or other proceeding brought for the recovery of the debt referred to in subsection (1), the member in respect of whom the debt was incurred is one of the persons found to be negligent, no amount shall be recoverable for the portion of the debt caused by the negligence of the member, and the portion of the debt so caused by the negligence of the member shall be determined in accordance with Sections 2 and 3 of The Contributory Negligence Act, although the member of the force may not be a party to the action or other proceeding.

Saving.

(3) Paragraph (b) of subsection (1) does not apply to any expenses for which provision is made for recovery by the Newfoundland Medical Care Commission pursuant to Section 42 of The Newfoundland Medical Care Insurance Act.

#### AGREEMENTS WITH FEDERAL GOVERNMENT.

Agreements with federal government.

**30.** The Minister may, with the approval of the Lieutenant-Governor in Council, enter into and implement agreements with the Government of Canada for the use or employment of the force, or any portion of the force, in carrying into effect any of the laws of Canada in force in the province, including, without limiting the generality of the foregoing, acting as and discharging the duties of fishery officers or fishery guardians.

CONCERNING AGREEMENTS GENERALLY.

**31.** The Minister may implement any agreement made under this Act.

Implementation of agreements.

**32.** Power to enter into any agreement shall include power to amend any such agreement from time to time, but where the approval of the Lieutenant-Governor in Council is required to an agreement, the approval of the Lieutenant-Governor in Council is also required for any amending agreement.

Power to amend agreements.

BOARDS, COMMITTEES AND COUNCILS.

**33.** The Lieutenant-Governor in Council may establish such boards, committees and councils as he deems necessary or desirable to assist and advise the Minister in carrying out the provisions of this Act and appoint the members thereof.

Boards, committees and councils.

CONCERNING PAYMENTS UNDER THIS ACT.

**34.—(1)** Any payments required to be made by or on behalf of Her Majesty in right of the province pursuant to any agreement entered into under this Act or in carrying out the provisions of this Act or the regulations shall, where payment is not provided for by or under any other Act, be paid by the Minister of Finance out of the Consolidated Revenue Fund of the province.

Payments.

**(2)** For the purposes of subsection (1), the expression "payments" includes payments provided for by any agreement made under Section 20 or any decision or award of a board of arbitrators under Section 21.

Definition.

REPEAL AND COMING INTO FORCE.

**35.—(1)** Notwithstanding the repeal of The Constabulary Act, chapter 26 of The Revised Statutes of Newfoundland, 1952, any regulations made under that Act or any amendments thereto (or any predecessor Act to that Act) and in force immediately before the 25th day of August 1970 may be amended or revoked by regulations made under this Act as if they were made hereunder, and, in so far as they are not revoked and as from time

Revocation of amendment of regulations previously made.

to time amended, shall continue in force and all the consequences shall follow as if they had been made under the provisions of this Act.

**Interpretation.**

(2) For the purposes of this section the expression "regulations" includes any order prescribing regulations, any rules and any order made pursuant to any statute.



## CHAPTER 59

### An Act Respecting A Pension Plan for the Constabulary Force of Newfoundland, the Officers and Men of the St. John's Fire Department, the Officers and Men Employed at that Prison Commonly Known as Her Majesty's Penitentiary and the Motor Engineer and Motor Mechanics in the Joint Services Garage.

1. This Act may be cited as The Constabulary (Pensions) Act. Short title.

#### INTERPRETATION.

- 2.—(1) In this Act Interpretation.
- (a) "Canada Pension Plan" means the *Canada Pension Plan*, chapter 51 of 13-14 Elizabeth II (Statutes of Canada);
  - (b) "child" includes a natural child, a stepchild and an adopted child;
  - (c) "contributor" means an employee to whom the Pension Plan applies and who makes all contributions required by this Act;
  - (d) "employee" means
    - (i) the Chief of Police and every commissioned and non-commissioned officer and constable of The Constabulary Force of Newfoundland organized and maintained under The Constabulary Act.
    - (ii) the Fire Chief and every commissioned and non-commissioned officer and constable of the St.

John's Fire Department established under The St. John's Fire Department Act,

- (iii) the Superintendent and Assistant Superintendent and every commissioned and non-commissioned officer, warder, matron and assistant matron of the Penitentiary referred to in The Prisons Act, and
- (iv) the Motor Engineer and Motor Mechanics in the Joint Services Garage operated by the Department of Justice;
- (e) "existing plan" means the pension plan effected by certain Orders-in-Council and Orders-in-Commission from time to time made before the date of the coming into force of this Act for those persons referred to in subparagraphs (i) and (ii) of paragraph (d) of this subsection and which have been made applicable to those persons referred to in subparagraph (iii) of the said paragraph (d), other than the matron and assistant matrons, by Order-in-Council 959-'57 approved by His Honour the Lieutenant-Governor in Council on the fifteenth day of November, 1957, and which have also been made applicable to those persons referred to in subparagraph (iv) of the said paragraph (d) by Order-in-Council 90-'60 approved by His Honour the Lieutenant-Governor in Council on the twenty-second day of January, 1960;
- (f) "gratuity" means, as the context indicates, a gratuity paid or payable by virtue of this Act or the existing plan;
- (g) "Minister" means the Minister of Finance;
- (h) "pension" means an annual pension awarded in accordance with the Pension Plan;
- (i) "pensionable service" means service done while in receipt of full salary and calculated in complete years which may be taken into account under the Pension

Plan for the purpose of determining whether an employee has qualified for the award of a pension and the amount thereof;

- (j) "pensioner" means a person in receipt of a pension under the Pension Plan;
- (k) "Pension Plan" means the pension plan established by this Act;
- (l) "post" means an office or employment to which an employee is or may be appointed;
- (m) "regulations" means regulations made under this Act;
- (n) "retirement age" means, subject to subsections (3) and (7), the end of the month in which an employee,
  - (i) in the case of
    - (A) the Chief of Police, the Assistant Chief of Police and the Deputy Assistant Chief of Police of The Constabulary Force of Newfoundland referred to in subparagraph (i) of paragraph (d) of this subsection,
    - (B) the Fire Chief, the Assistant Fire Chief and the Deputy Assistant Fire Chief of the St. John's Fire Department referred to in subparagraph (ii) of the said paragraph (d), and
    - (C) the Superintendent and the Assistant Superintendent of the Penitentiary referred to in subparagraph (iii) of the said paragraph (d),attains the age of sixty-five years,

(ii) in the case of

- (A) District Inspectors and Head Constables in The Constabulary Force of Newfoundland

referred to in subparagraph (i) of paragraph (d) of this subsection,

- (B) District Fire Chiefs in the St. John's Fire Department referred to in subparagraph (ii) of the said paragraph (d),
- (C) Chief Warders and Head Warders in the Penitentiary referred to in subparagraph (iii) of the said paragraph (d), and
- (D) the Motor Engineer in the Joint Services Garage referred to in subparagraph (iv) of the said paragraph (d),

attains the age of sixty years, and

- (iii) in the case of all other employees, including, without limiting the generality of the foregoing, Motor Mechanics in the Joint Services Garage referred to in subparagraph (iv) of paragraph (d) of this subsection, attains the age of fifty-five years or completes twenty-five years pensionable service, whichever first occurs;

- (o) "salary" means the remuneration paid at an annual, monthly, fortnightly, weekly or hourly rate for the normal working period of the employee but does not include payments made on a fee basis, or remuneration of any kind which is in excess of twenty-five thousand dollars (\$25,000.00) in any year; and

- (p) wherever the word

- (i) "year" is used, it shall be taken as three hundred and sixty-five days, and

- (ii) "month" is used, it shall be taken as thirty days.

- (2) Subject to Section 35, the Orders-in-Council and Orders-in-Commission referred to in paragraph (e) of subsection (1)

Concerning  
validity of  
certain  
Orders-in-  
Council and  
Orders-in-  
Commission.

are deemed to have, and to have had, at all material times full force and effect.

(3) Subject to subsection (4), the Lieutenant-Governor in Council may, if he is satisfied, upon medical evidence, that an employee is mentally and physically capable of performing his duties as an employee, by order direct that such employee, to be named in the order, may, for the purpose of completing such period of service as may be specified in the order, serve beyond his normal retirement age, in which event the retirement age in respect of such person means the end of the month in which the said period of service specified in the order is completed.

Retirement age may be increased in certain cases by order of the Lieutenant-Governor in Council.

(4) An order shall not be made under subsection (3) in respect of any employee below the rank of

Orders under subsection (3) not to be made in respect of certain employees.

(a) Head Constable in The Constabulary Force of Newfoundland;

(b) District Fire Chief in the St. John's Fire Department;  
or

(c) Head Warder in the Penitentiary,

referred to in paragraph (d) of subsection (1) extending the period of service of such employee beyond the end of the month in which he attains the age of fifty-five years.

(5) Subject to subsections (6) and (7), the Minister of Justice may, by order, direct that an employee, to be named in the order, may have his retirement advanced by one year so that he may retire

Advancement of retirement age by one year.

(a) at sixty-four years of age, if he is an employee mentioned in subparagraph (i) of paragraph (n) of subsection (1);

(b) at fifty-nine years of age, if he is an employee mentioned in subparagraph (ii) of the said paragraph (n);  
or

(c) on the completion of twenty-four years of service, if he is an employee mentioned in subparagraph (iii) of the said paragraph (n),

and, subject to the other provisions of this Act and of the regulations, if the contributions payable under this Act in respect of such period of one year are paid, such period shall, for the purposes of this Act, be deemed to be and counted as pensionable service completed before such advanced retirement age.

Condition  
attaching to  
order under  
subsection (5).

(6) An order under subsection (5) shall be subject to the condition that if the Minister of Justice requires the employee whose retirement is to be advanced by one year, at any time within three years after his retirement, to return to employment in The Constabulary Force of Newfoundland, the St. John's Fire Department, the Penitentiary or the Joint Services Garage, as the case may be, from which he retired, to serve, in a post not lower in rank than that from which he retired, for a period not in excess of one year to be specified by the Minister of Justice, such employee shall, unless he is unable to perform his duties in such post efficiently owing to physical or mental incapacity which is medically certified to the satisfaction of the Minister of Justice, so return and serve, and

- (a) if the period of one year referred to in subsection (5) has not been deemed to be and has not been counted as pensionable service under that subsection and if the period of employment to which such employee returns is a period of one year, such employee may elect to pay contributions under this Act in respect of such period of employment to which he returns and if he so elects and so pays such period of employment shall be counted as pensionable service;
- (b) if the period of one year referred to in subsection (5) has been deemed to be and counted as pensionable service under that subsection, no contributions shall be payable under this Act in respect of such period of employment to which such employee returns and such period of employment to which such employee returns shall not be counted as pensionable service;
- (c) if such employee does not return to employment when so required by the Minister of Justice, his pension may be cancelled by the Lieutenant-Governor in Council; and

- (d) such employee shall receive no pension during such period of employment to which he returns, but shall receive remuneration for his employment in accordance with the remuneration applicable to the post in which he is then employed.

(7) Where an order is made under subsection (5) in respect of any employee, the retirement age of such employee shall be at the end of the month in which he

Retirement age

- (a) attains the age of sixty-four years of age, if he is an employee mentioned in subparagraph (i) of paragraph (n) of subsection (1);
- (b) attains the age of fifty-nine years of age, if he is an employee mentioned in subparagraph (ii) of the said paragraph (n); or
- (c) completes twenty-four years of pensionable service, if he is an employee mentioned in subparagraph (iii) of the said paragraph (n).

ADMINISTRATION.

3. The Minister is charged with the administration of this Act, and he may designate persons to act on his behalf.

Administra-  
tion.

APPLICATION OF PENSION PLAN.

4.—(1) Subject to the exceptions and conditions prescribed in this section and the other provisions of this Act,

Right to elect.

- (a) all persons who were employees on the thirty-first day of March, 1967, other than the matron and assistant matrons of the Penitentiary referred to in paragraph (d) of subsection (1) of Section 2, and continued to be employees thereafter, shall, within a period of six months after the date of the passing of this Act, elect to be pensioned under the Pension Plan or the existing plan, and every such person who

(i) elects to be pensioned under the Pension Plan,  
or

(ii) fails to make an election within the said period

shall be pensioned under the Pension Plan and this Act shall apply to and in respect of him; and

(b) this Act shall apply to and in respect of the matron and assistant matrons of the Penitentiary referred to in paragraph (d) of subsection (1) of Section 2 and to and in respect of every person who becomes an employee on or after the first day of April, 1967, whether or not he was previously employed by the Crown as an employee or in any other capacity, and he shall be pensioned under the Pension Plan.

Contributions  
to be paid.

(2) All employees to whom the Pension Plan applies shall make the contributions prescribed in Section 5 and in or under the other provisions of this Act.

Exception.

(3) An employee shall not be eligible to make any election under this section or to make any contributions to or participate in the Pension Plan if he receives a pension from the Government of Newfoundland under contract or under any Act other than this Act.

Female  
employees.

(4) Every unmarried female employee who marries after the date of the passing of this Act, every female employee who was an employee and was married at the date of the passing of this Act, and every married female person who becomes an employee after the date of the passing of this Act, may elect not to participate in the Pension Plan, and the election shall be made within one year from the date

(a) of her marriage, by every unmarried female employee who marries after the date of the passing of this Act;

(b) of the date of the passing of this Act, by every female employee who was an employee and was married at the date of the passing of this Act; and

- (c) when she becomes an employee, by every married female person who becomes an employee after the date of the passing of this Act,

and from the date of her election the Pension Plan shall not apply to any person who makes an election under this subsection.

(5) Written notification of any election to be made under this section shall be given to the Minister within the time prescribed therein, and if such notification is not so given, the person entitled to make the election shall be deemed to have elected to participate in the Pension Plan.

Manner of election.

(6) Subject to subsection (7), an election made under this section shall be irrevocable.

Election to be irrevocable.

(7) Where a female employee elects not to participate in the Pension Plan and thereafter becomes a widow, while she is an employee, whether or not she was married when she made the election, she may, within six months after she becomes a widow, elect to be pensioned under the Pension Plan and the Pension Plan shall apply to a person who validly makes an election under this subsection on the terms and conditions, *mutatis mutandis*, prescribed in Section 25 in respect of a person referred to in that section.

Second election by certain female employees.

DEDUCTIONS FROM SALARY OF EMPLOYEE FOR PENSION PURPOSES.

5.—(1) Subject to subsections (2) and (3), there shall be deducted from the salary of every employee to whom the Pension Plan applies

Amount of deductions.

- (a) six per centum (6%) of that portion of his salary which is his basic exemption under the Canada Pension Plan;
- (b) four and two-tenths per centum (4.2%) of that portion of his salary in excess of his said basic exemption up to and including his Year's Maximum Pensionable Earnings as defined by the Canada Pension Plan; and
- (c) six per centum (6%) of that portion of his salary which is in excess of his Year's Maximum Pensionable Earnings as defined by the Canada Pension Plan.

When deductions to be terminated or reduced

(2) The contributions prescribed in subsection (1) shall not be payable by an employee after the date when he is credited with such pensionable service as would entitle him to receive a pension equal to seventy-five per centum (75%) of his annual salary applicable at such date, if he had then reached retirement age, but thereafter there shall be deducted from his salary, until a pension is awarded to him, contributions calculated in accordance with the formula prescribed in that subsection on any amount by which his salary exceeds the salary paid to him on that date.

Deductions under Pensions (Premiums) Act, 1966-67, to be credited.

(3) Moneys deducted from the salary of an employee or paid by him under The Pensions (Premiums) Act, 1966-67, shall, notwithstanding anything to the contrary contained in that Act, be retained in the Consolidated Revenue Fund and credited to him for the period to which they relate in lieu of deductions under this section.

Deposit of deductions.

6. All deductions made under Section 5 shall be deposited each month to the credit of the Consolidated Revenue Fund.

#### REPAYMENT OF CONTRIBUTIONS.

Repayment of contributions and payment of gratuity.

7.—(1) Subject to subsections (2) and (3), if an employee to whom the Pension Plan applies is not entitled to a pension under the Pension Plan,

(a) if the employee is living, the contributions made by him together with simple interest on the contributions at three per centum (3%) per annum shall be paid to him; or

(b) if the employee is not living,

(i) the contributions made by him together with simple interest on the contributions at three per centum (3%) per annum shall be paid to his personal representative, and

(ii) a death gratuity equal to that death gratuity payable under the existing plan accrued to and including the thirty-first day of March, 1967, if the

relevant provisions of the existing plan applied to him, shall be paid to the persons, if any, who would be entitled thereto under the existing plan when

- (c) the employee dies before having completed fifteen years of pensionable service;
- (d) the employee dies after completing fifteen years of pensionable service but does not leave him surviving any person entitled to a pension under the Pension Plan;
- (e) the employee makes an election, where the employee is a married or an unmarried female employee referred to in subsection (4) of Section 4 and elects, in accordance with that subsection, not to participate in the Pension Plan;
- (f) the employee was in a post which was abolished and a post not lower in rank, salary and emoluments than the post which was abolished has not been offered to him within one month after the post was abolished; or
- (g) the employee terminated his employment or his employment was terminated otherwise than by death.

(2) Where any sum is payable to the personal representative of an employee under subsection (1) or any other provision of this Act, the Minister may, without probate or proof of title, pay or distribute an amount not exceeding fifteen hundred dollars, whether that amount is the whole or part only of that sum, to or among any one or more of the persons appearing to the Minister to be the persons beneficially entitled to the estate of the deceased employee, and in determining the persons to whom or the proportions in which the amount shall be paid or distributed, the Minister may have regard to any payment made or expenses incurred by any such person for or on account of the burial expenses of the deceased employee.

Payment without probate in certain cases.

(3) No employee shall be entitled to interest on his contributions to the Pension Plan until he has contributed for one year.

Interest on contributions.

## CONCERNING MONEYS TO WHICH THE CROWN IS ENTITLED.

Debts due  
to Crown.

**8.** If through any cause an overpayment of pension or other moneys has been made to any person or any moneys are payable to the Crown by any person, the Minister may reduce, suspend or withdraw future payments of pension or other moneys payable to that person under this Act, until the amount overpaid or payable has been recovered.

## PENSIONABLE SERVICE.

Pensionable  
service after  
April 1, 1967.

**9.** Subject to this Act and the regulations, pensionable service of an employee who was an employee on the first day of April, 1967, or becomes an employee after that date, shall be counted from the said first day of April, 1967, or from the date on which he commences making contributions, whichever is the later.

Pensionable  
service prior  
to April 1, 1967.

**10.** An employee who was an employee on the first day of April, 1967, shall, if he elects, or is deemed to have elected, to participate in the Pension Plan in accordance with this Act, be credited under the Pension Plan, in addition to pensionable service under Section 9, with all service completed by him prior to the first day of April, 1967, which he would have been eligible to have had credited to him under the existing plan had he not so elected or been deemed to have so elected.

Credit for  
additional  
years of service.

**11.—(1)** Subject to subsections (2) and (3) of this section and to Section 38, the Lieutenant-Governor in Council may make regulations prescribing additional years of pensionable service which may be credited to an employee and the conditions upon which such pensionable service shall be credited to him.

Contributions  
for service.

(2) Subject to subsection (3) and the other provisions of this Act, the employee shall pay to the Consolidated Revenue Fund for any additional years of service credited to him under the regulations at the normal annual contribution rate based on the current salary rate of the employee together with simple interest at six and one-half per centum (6½%) per annum to run from the date when he is credited with the additional service to the date of payment.

(3) The payment to be made pursuant to subsection (2) may be made by instalments over such period not longer than the period for which credit is given, as may be determined by the Minister, with simple interest at the rate of six and one-half per centum (6½%) per annum.

Instalments.

PENSION RIGHTS.

**12.**—(1) Subject to this Act, every contributor shall receive a pension as a matter of right.

Pension a matter of right.

(2) Nothing in subsection (1) or the other provisions of this Act affects the right of the Crown to dismiss any employee or any other person at any time.

Right of dismissal.

**13.** A contributor shall not receive a pension under the Pension Plan, until he has completed not less than fifteen (15) years of pensionable service or while he is in receipt of salary as an employee.

Requirements to qualify for pension.

**14.**—(1) Subject to subsection (3), an employee shall not be eligible to participate in the Pension Plan or to make any contribution until he has attained the age of eighteen (18) years.

Age of commencement under Pension Plan.

(2) Every employee shall make contributions from the first day of the month immediately following the month in which he attains the age of eighteen (18) years.

Contributions.

(3) Every employee who before the first day of April, 1967, had done pensionable service while under the age of eighteen (18) years which is counted as pensionable service under the existing plan shall be credited with that pensionable service under the Pension Plan.

Exception.

**15.**—(1) Subject to subsections (2) and (3) of this section and to Section 17, every pension awarded to a contributor under the Pension Plan shall be the amount calculated according to the second column of the Schedule to this Act after the completion of the number of years of service shown in the first column of that Schedule, but

Calculation of pension.

- (a) complete years of service only shall be counted in computing years of service, and a fraction of a year shall be disregarded; and
- (b) the pension to be awarded to an employee under the Pension Plan shall not exceed seventy-five per centum (75%) of his annual salary at the date of his retirement.

Reduction of pension.

(2) Subject to subsection (3), the amount calculated under subsection (1) shall be reduced by six-tenths of one per centum (0.6%) of the annual salary of the contributor used in the calculation of that amount, up to but not exceeding his Year's Maximum Pensionable Earnings under the Canada Pension Plan established immediately before he ceased to be employed, multiplied by the number of years of his pensionable service done after March 31, 1967, up to but not exceeding thirty years of such pensionable service.

Exception.

(3) Subsection (2) shall not be applied to the pension of a contributor until such time as the contributor is eligible to receive benefits under the Canada Pension Plan, or would have become entitled thereto if he had applied therefor.

Retirement.

**16.** Every contributor shall be retired

- (a) when he attains retirement age;
- (b) if he is unable to perform his duties efficiently owing to physical or mental incapacity which is medically certified to the satisfaction of the Minister as likely to be permanent; or
- (c) if his post is abolished and a post not lower in rank, salary and emoluments than the post which was abolished was not offered to him within one month after his post was abolished.

Pension upon retirement.

**17.** A contributor who has done not less than fifteen years of pensionable service shall, upon his retirement for any of the reasons referred to in paragraphs (a), (b) and (c) of Section 16,

be awarded a pension to be calculated and paid in accordance with Section 15 and the other provisions of this Act.

**18.** Pensions and all other moneys payable under this Act shall be paid out of the Consolidated Revenue Fund.

Payment of pensions.

**19.** A pensioner who receives a pension for the reason prescribed in

Offer of re-employment.

- (a) paragraph (b) of Section 16, and thereafter becomes fit to work; or
- (b) paragraph (c) of Section 16,

may, if he has not then attained retirement age, be offered a post by the Lieutenant-Governor in Council, not lower in rank, salary and emoluments than the post from which he retired.

**20.** If a pensioner referred to in Section 19 receives an offer of re-employment under that section

Cancellation of pension where offer of employment under Section 19 is refused.

- (a) within twelve (12) calendar months from the date he becomes fit to work, if he is a person referred to in paragraph (b) of Section 16; or
- (b) within one month after his post is abolished, if he is a person referred to in paragraph (c) of Section 16,

and refuses the offer without reasonable cause for such refusal, his pension may be cancelled by the Lieutenant-Governor in Council.

**21.—(1)** If a pensioner accepts an offer of re-employment made to him under Section 19, his pension shall be suspended, and subject to the making of contributions as required under this Act, the period of subsequent employment shall, in calculating his pension when he reaches retirement age, be added to his years of pensionable service accumulated prior to his first retirement.

Recalculation of pension.

(2) Any period during which a pensioner referred to in subsection (1) was in receipt of a pension shall not be credited to him as years of pensionable service under this section,

Certain periods not to be credited.

*Ex-gratia*  
award for  
injuries  
received.

**22.—(1)** If a contributor is injured

- (a) in the discharge of his duty;
- (b) without any advertent negligence on his part; and
- (c) by some injury specifically attributable to the nature of his duty

and has been retired because of such injury, and if his capacity to contribute to his support remains impaired by reason of the injury, the Lieutenant-Governor in Council may grant to him or if he dies from the injury, to his widow, or if he does not leave a widow surviving him, to his children, an allowance in accordance with regulations made under subsection (2).

Regulations.

(2) Subject to Section 38, the Lieutenant-Governor in Council may make regulations prescribing the allowances to be granted under this section and the terms and conditions under which they will be paid.

Pension to  
widow or child.

**23.—(1)** Subject to subsections (2) and (3), a pension equal to one-half of the pension being paid to a pensioner who dies, or one-half of the pension which a contributor who dies before retirement age would receive, if he had attained retirement age and was awarded a pension immediately before his death, as the case may be, shall be paid on the first day of the month following the month in which the death of the pensioner or contributor occurs,

- (a) to the widow of a male pensioner or contributor until her remarriage or death; or
- (b) to the widower of a female pensioner or contributor who by reason of physical or mental incapacity is unable to support himself and is financially dependent on that pensioner or contributor, until his remarriage or death, or until he has recovered from his incapacity and is capable of supporting himself.

Pension to  
children.

(2) Where a pensioner or contributor referred to in subsection (1) dies leaving children but does not leave a widow or widower, as the case may be, or leaves a widow or widower who is then,

or at any time later, not entitled to receive a pension under subsection (1), the pension that would otherwise be payable to the widow or widower under that subsection shall be paid equally to or for the benefit of the children of the pensioner or contributor who have not attained the age of eighteen years on each pension payment date.

(3) The widow or widower of a pensioner or contributor shall not receive a pension, if

Pension not payable in certain cases.

- (a) the widow or widower married the pensioner or contributor after the pensioner or contributor attained the age of sixty (60) years; or
- (b) the pensioner or contributor died before the first anniversary of the marriage, if the pensioner or contributor was at the time of the marriage in such a condition of health as to justify an expectation that he would not survive for at least one year thereafter.

**24.** No pension may be assigned or given as security, but the Minister may

Pension not assignable.

- (a) approve payment of the whole or part of a pension to a relative of a pensioner or to any other person on the authority in writing of the pensioner;
- (b) direct that payment be made of the whole or part of a pension to a relative or other person who maintains or who is responsible for the maintenance of a pensioner who is suffering from physical, or, subject to applicable law, mental incapacity; or
- (c) direct that payment be made of the whole or part of a pension to a relative or other person who maintains or is responsible for the maintenance of a dependent child or children of a pensioner.

**25.** Subject to Section 28, when a person who was employed as an employee ceased to be so employed and becomes an employee after the thirty-first day of March, 1967, he may be credited

Purchase of prior service.

- (a) for service done by him before the first day of April, 1967, with such pensionable service as may be approved by the Lieutenant-Governor in Council, if any gratuity paid to such person is repaid in full; or
- (b) for service done by him after the thirty-first day of March, 1967, with such prior pensionable service as he may elect to purchase on paying a contribution to be calculated, in accordance with the formula prescribed in Section 5, on the annual salary paid to him at the commencement of his re-employment together with simple interest on such contribution at the rate of six and one-half per centum ( $6\frac{1}{2}\%$ ) per annum to run from the date he exercised his election to the date of payment.

Payment by instalments for prior service purchased.

**26.** Payment of contributions and interest thereon for the purchase of prior service under Section 25 may be made by instalments with simple interest at the rate of six and one-half per centum ( $6\frac{1}{2}\%$ ) per annum, and all such instalments shall be paid during such period, not to exceed the period of prior service purchased, and upon such other terms and conditions, as the Minister may decide.

Election to purchase prior service.

**27.** An election to purchase prior service shall be made in writing to the Minister within one year of recommencing employment and shall be irrevocable.

Pension rights of teachers or Government employees on becoming employees.

**28.** Where a person to whom

- (a) the pension provisions of The Education (Teachers' Pensions) Act apply;
- (b) the Pension Plan under The Public Service (Pensions) Act applies; or
- (c) the pension provisions of The Civil Service Act apply

becomes an employee before attaining retirement age and before receiving a pension as such a person, he shall be given credit for the pensionable service accrued to him under the pension plan applicable to him as such person and shall, from the

date he becomes an employee, make contributions to and participate in the Pension Plan and be subject to this Act.

**29.**—(1) Leave of absence without pay shall not be counted as pensionable service unless it is authorized by the Minister and contributions are paid in respect of the period of such leave by agreement with the Minister.

Leave of absence without pay, non-pensionable.

(2) Service in respect of which contributions payable under this Act have not been paid shall not be counted as pensionable service.

Service in respect of which contributions are not paid.

**30.** Subject to the provisions of Section 23, pensions shall be paid on the dates on which salaries are paid unless the Minister otherwise directs and shall cease at the end of the month in which the death of the pensioner occurs.

Pensions payable on salary payment dates.

**31.** The Lieutenant-Governor in Council may appoint a committee to assist the Minister in the administration of this Act and may prescribe the duties of the committee and designate from time to time the matters on which they shall make recommendations to the Minister.

Committee.

**32.** Subject to Section 38 and the other provisions of this Act and the prior approval of the Lieutenant-Governor in Council, the Minister may make regulations establishing conditions under which an employee or a person who is about to become an employee may purchase service which shall be counted as pensionable service.

Purchase of service.

CONCERNING THE EXISTING PLAN.

**33.** An employee who elects to be subject to the existing plan shall, subject to The Constabulary Act and to Section 35 and the other provisions of this Act and to regulations, if any, made under The Constabulary Act, be eligible for the award of a pension or gratuity in the same amount, at the same time and upon the same terms and conditions as if this Act, other than the provisions of it that are specifically made applicable to him, had not been enacted.

Rights of employees under existing plan not affected.

In case of  
conflict this  
Act prevails.

**34.** Where this Act conflicts with The Constabulary Act or any regulations made thereunder, this Act prevails.

Amendments  
to the  
existing plan.

**35.** Notwithstanding any of the provisions of the existing plan, there are deemed to be included in the existing plan, and to have the force and effect of law,

(a) a provision that

(i) subject to subparagraphs (ii) and (iii), there shall be deducted from the salary of every employee to whom the existing plan applies

(A) six per centum (6%) of that portion of his salary which is his basic exemption under the Canada Pension Plan,

(B) four and two-tenths per centum (4.2%) of that portion of his salary in excess of his said basic exemption up to and including his Year's Maximum Pensionable Earnings as defined by the Canada Pension Plan, and

(C) six per centum (6%) of that portion of his salary which is in excess of his Year's Maximum Pensionable Earnings as defined by the Canada Pension Plan,

(ii) the contributions prescribed in subparagraph (i) shall not be payable by an employee after the date when he is credited with such pensionable service as would entitle him to receive a pension equal to seventy-five per centum (75%) of his annual salary applicable at such date, if he had then reached retirement age, but thereafter there shall be deducted from his salary, until a pension is awarded to him, contributions calculated in accordance with the formula prescribed in that subsection on any amount by which his salary exceeds the salary paid to him on that date,

- (iii) moneys deducted from the salary of an employee or paid by him under The Pensions (Premiums) Act, shall notwithstanding anything to the contrary contained in that Act, be retained in the Consolidated Revenue Fund and credited to him for the period to which they relate in lieu of deductions under this provision,
  - (iv) any service done on or after the first day of April, 1967, in respect of which the premiums payable under this provision have not been paid shall not be counted as pensionable service, and
  - (v) all premiums deducted from the salary of, paid by or credited to any person under this provision shall be deposited each month to the credit of the Consolidated Revenue Fund;
- (b) a provision that
- (i) subject to subparagraph (ii), the amount of annual pension awarded under the existing plan to a contributor under the existing plan as amended by this Act shall be the amount calculated in accordance with the existing plan as it was before the coming into force of this Act reduced by six-tenths of one per centum (0.6%) of the annual salary of the contributor used in the calculation of that amount, up to but not exceeding his Year's Maximum Pensionable Earnings under the Canada Pension Plan established immediately before he ceased to be employed, multiplied by the number of years of his pensionable service done after March 31, 1967, up to but not exceeding thirty years of such pensionable service, and
  - (ii) subparagraph (i) shall not be applied to the pension of a contributor referred to in subparagraph (i) until such time as the contributor is eligible to receive benefits under the Canada Pension Plan,

or would have become entitled thereto if he had applied therefor;

- (c) a provision that, subject to this section and to the existing plan as amended by this section, an employee to whom the existing plan applies and in respect of whom premiums are deducted from his salary or paid by or credited to him under the existing plan as amended by this section shall receive a pension under the existing plan as amended by this section, as a matter of right;
- (d) a provision that nothing in paragraph (c) or the other provisions of this Act or the provisions of the existing plan as amended by this section affects the rights of the Crown to dismiss any employee or any other person at any time;
- (e) a provision that subsections (5), (6) and (7) of Section 2 of this Act and Sections 36 and 37 of this Act are, *mutatis mutandis*, included in the existing plan; and
- (f) a provision that, where, after the coming into force of this section, any of the provisions of the existing plan as it was before the coming into force of this section conflicts with any of the provisions of the existing plan as amended by this section, the existing plan as amended by this section shall prevail.

#### APPEALS.

Appeal.

**36.**—(1) A contributor or other person who is aggrieved by a decision of the Minister or of the Lieutenant-Governor in Council in any matter related to, connected with or arising out of his entitlement to or the award to him of a pension or any other moneys under this Act may appeal therefrom to a judge of the Supreme Court of Newfoundland or a judge of a district court within the territorial limits of which the contributor or other person resides.

Service  
of notice.

(2) If a contributor or other person proposes to appeal under subsection (1), he shall, within sixty (60) days after he has received the decision of the Minister or of the Lieutenant-Gov-

error in Council, serve on the Minister a written notice of his intention to appeal to a judge of the Supreme Court or to a judge of a district court.

(3) The notice of appeal served under subsection (2) shall be signed by the contributor or other person or by his solicitor or agent, and in the notice, the grounds of the appeal shall be set forth, and the contributor or other person shall file a copy of the notice in the office of the Registrar of the Supreme Court of Newfoundland, or with the judge of the district court, if his appeal is made to a district court.

Notice to set forth grounds of appeal.

**37.**—(1) The contributor or other person shall, within fourteen days after service of the notice of appeal under subsection (2) of Section 36, apply to the judge for the appointment of a day for the hearing of the appeal, and shall, not less than fourteen days before the hearing, serve upon the Minister a written notice of the day appointed for the hearing.

Appointment of day for hearing.

(2) The judge shall hear the appeal and the evidence adduced before him by the contributor or other person and by the Minister in a summary manner and shall decide the matter of the appeal.

Judge to hear appeal.

(3) The Minister shall cause to be produced before the judge on the hearing of the appeal all papers and documents in his possession affecting the matter of the appeal.

Production of papers, etc.

(4) The costs of the appeal are in the discretion of the judge and he may make an order respecting them in favour of or against the Minister and may fix the amount thereof.

Costs.

(5) An appeal may be taken from the decision of the judge to the Supreme Court upon any point of law raised upon the hearing of the appeal, and the rules governing appeals to that Court from a decision of a judge of the Supreme Court or a judge of a district court, whichever rules are appropriate, apply to appeals under this subsection.

Appeal to Supreme Court.

REGULATIONS.

**38.**—(1) The Lieutenant-Governor in Council may make regulations, not inconsistent with this Act, for the purpose of carry-

Regulations.

ing out the provisions of this Act according to their true intent and purpose.

Date of effect of regulations.

(2) Regulations made under this section or any other provision of this Act shall be published in *The Newfoundland Gazette* and shall have effect from the date of publication or from such other date not earlier than the first day of April, 1967, as may be specified in the regulations, and the regulations shall be laid before the Legislature within fifteen days after they are made, if the Legislature is then in session, and, if it is not, then within fifteen days after the commencement of the next ensuing session.

#### GENERAL.

Pensions and gratuities not attachable.

**39.** Subject to Section 8, a pension or gratuity awarded under this Act shall not be liable to or be taken under attachment or execution.

Employee under this Act not an employee under The Public Service (Pensions) Act.

**40.** An employee under this Act is not an employee for the purposes of The Public Service (Pensions) Act and is not governed by the pension provisions of The Civil Service Act.

Repayment of certain contributions.

**41.** Deductions made, under the provisions of The Pensions (Premiums) Act from the salary of any employee on or after the first day of April, 1967, and before the 11th day of June, 1970, contrary to the provisions of subsection (2) of Section 5 shall be paid to that employee, together with simple interest on such deductions at three per centum (3%) per annum.

Coming into force.

**42.** This Act shall be deemed to have come into force on the first day of April, 1967.

SCHEDULE.

Number of Complete Years of Service	Percentage of Annual Salary at Date of Retirement
15	30%
16	32%
17	34%
18	36%
19	38%
20	40%
21	44%
22	48%
23	52%
24	56%
25	60%
26	62%
27	64%
28	66%
29	68%
30	75%





## CHAPTER 60

### An Act Respecting Contingent Charges of Departments

1. This Act may be cited as The Contingencies Act. Short title.
  
2. The contingencies of each department of the Civil Service Contingencies.  
mean and include only
  - (a) petty expense, not exceeding in any department a sum apportioned by Order in Council;
  - (b) postage, freight and express charges;
  - (c) printing and gazetting;
  - (d) purchase of maps and stationery;
  - (e) registration of births, marriages and deaths;
  - (f) standard weights and measures;
  - (g) subscriptions to and advertising in newspapers;
  - (h) telegraphing, including public messages and telephones;
  - (i) travelling expense, including cab-hire;
  - (j) wages of charwomen, and other expenses of cleaning offices.
  
3. Whenever any contingency is required by any department Requisition for contingencies by Deputy.  
whether for an article to be furnished or service to be performed, the Deputy Head of the Department shall apply therefor by requisition, in writing, to the person by whom the same is to be furnished or performed; and such requisition shall, wherever it

can be so made, be antecedent to the delivery of the article or performance of the service.

Accounts to be accompanied by requisition.

**4.** Every account rendered to the Deputy Head of a department to be certified shall be accompanied by the original requisition, in respect of which such account accrued, and, when certified by him, shall be forwarded for payment to an officer of the Department of Finance, who shall be called the Accountant of Contingencies, and, except as hereinafter mentioned, shall then be paid by him.

Certificate for payment, etc.

**5.** Every such certificate shall expressly state that each item contained in the account has been incurred by the authority, or upon the order of the Head or Deputy Head of the Department, and that the articles or services charged for have been received or performed, and that the prices charged are in his opinion severally fair and just, and that the expenditure incurred is necessary for the public service; but the Accountant of Contingencies shall nevertheless investigate the account and ascertain the correct price before paying the same; and the Treasury Board shall from time to time prescribe the mode of investigating accounts and the standard by which the correct price shall be ascertained by the Accountant of Contingencies before such payment.

Accountant may withhold payment and submit account to Auditor General.

**6.** If it appears to the Accountant of Contingencies that any such account is for a purpose not included under the above definition of contingencies, or that it is in excess of the amount for which authority has been given, or that the amount or any part thereof has been previously paid, or that there is any other irregularity therein, he shall withhold payment and submit the account to the Auditor General; and if the Auditor General, after conference with the Deputy Head of the Department signing the requisition, is of opinion that there is any irregularity in the same, he shall submit it to the Treasury Board before payment.

Deputy to submit monthly account of expenditures.

**7.** The Deputy Head of each Department shall submit to the Head thereof, monthly, an account in detail of the expenditure for contingencies during the month.

Accountant to submit monthly statement of amounts paid in advance to Auditor General.

**8.** The Accountant of Contingencies shall submit monthly, through the Auditor General, to the Treasury Board, a statement of all sums which have been paid in advance, and to be accounted for, and which remained unaccounted for at the end of the last preceding month.

**9.** The Accountant of Contingencies shall render to the Auditor General, monthly, a statement in detail, accompanied by vouchers, of all sums paid by him during the month, and of all moneys received, with a bank certificate of the balance at his credit at the end of the month.

Accountant to render monthly statement of amounts paid with vouchers.

**10.** The estimates for contingencies of each department shall be prepared and submitted to the Legislature separately, but may be voted in one sum, and in that case, and as soon as conveniently may be after the same have been voted by the Legislature, the Lieutenant-Governor in Council shall assign a certain sum for defraying the contingencies of each department, reserving a certain amount for general expenses, not specially applicable to any individual department to be expended, upon requisition and certificate of the Secretary of the Treasury Board, in such manner as is hereinbefore provided in respect of the contingencies of any department.

Estimate for contingencies of each department to be submitted to Legislature separately.

**11.** An account shall be laid before the Legislature each year, showing the amount expended under the several heads of service specified in Section 2.

Account to be laid before Legislature.

**12.** This Act shall apply as well to the outside service of the several departments as to the departments of the Civil Service at St. John's.

Application of Act.





## CHAPTER 61

### An Act Respecting Liability in Actions for Damages for Negligence Where More than One Party is at Fault

1. This Act may be cited as The Contributory Negligence Act. Short title.
2. Where by the fault of two or more persons damage or loss is caused to one or more of them, the liability to make good the damage or loss shall be in proportion to the degree in which each person was at fault: Provided that
  - (a) if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability shall be apportioned equally; and
  - (b) nothing in this section shall operate so as to render any person liable for any damage or loss to which his fault has not contributed. Apportionment of damage or loss.
3. Where damage or loss has been caused by the fault of two or more persons, the court shall determine the degree in which each was at fault, and where two or more persons are found at fault they shall be jointly and severally liable to the person suffering damage or loss, but as between themselves, in the absence of any contract express or implied, they shall be liable to make contribution to and indemnify each other in the degree in which they are respectively found to have been at fault. Degree of fault.
4. In any action the amount of damage or loss, the fault, if any, and the degrees of fault shall be questions of fact. Questions of fact.
5. Where the trial is before a judge with a jury the judge shall not submit to the jury any question as to whether, notwithstanding the fault of one party, the other could have avoided the consequences thereof unless in his opinion there Restriction on submission to jury.

is evidence upon which the jury could reasonably find that the act or omission of the latter was clearly subsequent to and severable from the act or omission of the former so as not to be substantially contemporaneous with it.

Judge without a jury.

**6.** Where the trial is before a judge without a jury the judge shall not take into consideration any question as to whether, notwithstanding the fault of one party, the other could have avoided the consequences thereof unless he is satisfied by the evidence that the act or omission of the latter was clearly subsequent to and severable from the act or omission of the former so as not to be substantially contemporaneous therewith.

Adding party defendant.

**7.** When it appears that a person not a party to an action is or may be wholly or partly responsible for the damages claimed, he may be added as a party defendant or may be made a third party to the action, upon such terms as are deemed just.

Contribution where plaintiff is a passenger.

**8.** Where no cause of action exists against the owner or driver of a motor vehicle by reason of Section 221 of The Highway Traffic Act, no damages or contribution or indemnity shall be recoverable from any person for the portion of the damage or loss caused by the negligence of the owner or driver, and the portion of the damage or loss so caused by the negligence of the owner or driver shall be determined although the owner or driver is not a party to the action.

Contribution where plaintiff is spouse of negligent person.

**9.** In any action founded upon negligence and brought for damage or loss resulting from bodily injury to or the death of any married person, where one of the persons found to be negligent is the spouse of such married person, no damages, contribution or indemnity shall be recoverable for the portion of damage or loss caused by the negligence of such spouse, and the portion of the loss or damage so caused by the negligence of the spouse shall be determined although the spouse is not a party to the action.

Apportionment of liability for costs.

**10.** Unless the judge otherwise directs, the liability for costs of the parties to every action shall be in the same proportion as their respective liability to make good the damage or loss, and

where, as between two persons, one is entitled to a judgment for an excess of damage or loss and the other to a judgment for an excess of costs there shall be a set-off of the respective amounts and judgment shall be given accordingly.

**11.** Nothing in this Act affects any cause of action existing when this Act comes into force. Pending actions.





## CHAPTER 62

### An Act Respecting Restrictions on the Distribution of Certain Foods

- 1.** This Act may be cited as The Control of Foods (Distribution) Act Short title.
- 2.** In this Act and in any order made thereunder unless the context otherwise requires Interpretation.
- (a) "Minister" means the Minister of Supply or such other Minister as the Lieutenant-Governor in Council may from time to time appoint to administer this Act;
- (b) "order" means an order made under this Act.
- 3.** The Minister may by order make provision Powers of Minister to control certain foods.
- (a) for regulating or prohibiting within Newfoundland the movement, distribution, disposal or use of the following foods, namely: salt beef, salt pork, flour, sugar, molasses, tea, peas and beans;
- (b) for requiring persons carrying on any trade or business to keep such books, accounts and records relating to such foods as may be prescribed by or under the order;
- (c) for requiring persons carrying on or employed in connection with any trade or business relating to such foods, if requested so to do by the Minister or a person authorized by him, to produce to the Minister or to such person or to any person as may be mentioned in the request such books, accounts, or other documents as relate to their dealing with such foods, and to furnish him such estimates, or information relating to such foods as may be mentioned or described in the request;

- (d) for authorizing the entering and inspection of any premises with a view to ascertaining whether the provisions of any order are being carried out with a view to securing compliance therewith,

and also make such provision, including provision for requiring any person to furnish any information, as the Minister thinks necessary or expedient for facilitating the introduction or operation of a scheme of control for which provision has been made or for which, in the opinion of the Minister, it will or may be found necessary or expedient that provision should be made under this Act, and an order may prohibit the doing of anything regulated by the order except under the authority of a licence granted by the Minister or person authorized by him, and may be made to apply to persons or trades or businesses in so far as they deal with such foods, and either to the whole or any part of any business, and so as to have effect either generally or in any particular area.

Penalty for  
contravention  
of orders under  
this Act.

**4.**—(1) Any person who contravenes any of the provisions of any order is guilty of an offence and is liable on summary conviction or upon indictment, subject to subsections (2) and (3), to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding three months or to both such fine and such imprisonment and in default of payment of such fine to additional imprisonment for a term not exceeding six months and any foods specified in Section 3 in respect of which the offence was committed, becomes the property of the Crown as soon as the accused is convicted.

(2) The minimum amount of any fine imposed under subsection (1) shall be such amount as will in the opinion of the court secure that the offender derives no benefit from the offence and may exceed the maximum fine set out in that subsection.

(3) The court may, if, in any special circumstances it feels that a fine should not be imposed, refuse to impose a fine.

Directors or  
officers of  
bodies corporate  
deemed to be  
guilty of  
offences in  
certain cases.

**5.** Where a person convicted of an offence is a body corporate every person who, at the time of the offence, was a director or officer of the body corporate, is deemed to be guilty of that offence, unless he proves that the offence was committed

without his consent or connivance and that he exercised all such diligence to prevent the offence as he ought to have exercised having regard to the nature of his functions as a director or officer of that body and to all the circumstances.

**6.** Any contravention of any of the provisions of this Act or of any order by any officer, servant, or agent acting for or employed by any person or corporation and being within the scope of his employment or office is deemed to be the offence both of himself and of the employing person or corporation.

Offences of officers, servants or agents deemed to be offences both of themselves and employer.





## CHAPTER 63

### An Act Respecting Conveyance by Deeds and Vesting in Purchasers Various Powers Commonly Conferred by Provisions Inserted in Deeds and of Other Matters.

#### PRELIMINARY.

1. This Act may be cited as The Conveyancing Act.
2. In this Act unless a contrary intention appears
  - (a) "convey" has a meaning corresponding with that of conveyance;
  - (b) "conveyance" includes assignment, appointment, lease, settlement and other assurance and covenant to surrender made by deed, on a sale, mortgage, demise or settlement of any property, or on any other dealing by deed with or for any property;
  - (c) "court" means Supreme Court of Newfoundland;
  - (d) "incumbrance" includes a mortgage and a trust for securing money and a lien and a charge of a portion, annuity or other capital or annual sum;
  - (e) "incumbrancer" has a meaning corresponding with that of incumbrance, and includes every person entitled to the benefit of an incumbrance, or to require payment or discharge thereof;
  - (f) "mortgage" includes any charge on any property for securing money or money's worth;
  - (g) "mortgage money" means money or money's worth secured by a mortgage;

Short title.

Interpretation.

- (h) "mortgagee" includes any person from time to time deriving title under the original mortgagee;
- (i) "mortgagee in possession" is, for the purposes of this Act, a mortgagee who, in right of the mortgage, has entered into and is in possession of the mortgaged property;
- (j) "mortgagor" includes any person from time to time deriving title under the original mortgagor, or entitled to redeem a mortgage, according to his estate, interest or right in the mortgaged property;
- (k) "person" includes corporation;
- (l) "property" includes real and personal chattels, and any debt, and any thing in action, and any other right or interest in the nature of property, whether in possession or not;
- (m) "purchase" has a meaning corresponding with that of purchaser;
- (n) "purchaser" includes a lessee or mortgagee, or any intending purchaser, lessee or mortgagee, or other person who, for valuable consideration, takes or deals for any property;
- (o) "securities" include stocks, funds and shares;
- (p) "writing" includes print.

#### GENERAL WORDS.

General words  
in conveyances  
of land or  
buildings.

**3.—(1)** A conveyance of land shall be deemed to include, and shall, by virtue of this Act, operate to convey, with the land, all buildings, erections, fixtures, commons, hedges, ditches, fences, ways, waters, watercourses, liberties, privileges, easements, rights and advantages whatsoever appertaining or reputed to appertain to the land, or any part thereof, or at the time of conveyance demised, occupied or enjoyed with, or reputed or known as part or parcel of, or appurtenant to, the land or any part thereof.

(2) A conveyance of land, having houses or other buildings thereon shall be deemed to include, and shall, by virtue of this

Act, operate to convey with the land, houses, or other buildings, all out-houses, erections, fixtures, cellars, cisterns, sewers, gutters, drains, ways, passages, lights, water-courses, liberties, privileges, easements, rights and advantages whatsoever appertaining, or reputed to appertain, to the land, houses or other buildings conveyed or any of them, or any part thereof.

(3) This section applies only if and as far as a contrary intention is not expressed in the conveyance, and shall have effect subject to the terms of the conveyance and to the provisions therein contained.

(4) This section shall not be construed as giving to any person a better title to any property, right or thing in this section mentioned than the title which the conveyance gives to him to the land expressed to be conveyed, or as conveying to him any property, right or thing in this section mentioned, further or otherwise than as the same could have been conveyed to him by the conveying parties.

(5) This section applies only to conveyances made after the Sixth day of August, Anno Domini one thousand eight hundred and ninety-six.

#### COVENANTS FOR TITLE.

4.—(1) In a conveyance there shall, in the several cases in this section mentioned, be deemed to be included, and there shall in those several cases, by virtue of this Act, be implied, a covenant to the effect in this section stated, by the person or by each person who conveys, as far as regards the subject matter, or share of subject matter, expressed to be conveyed by him, with the person, if one, to whom the conveyance is made, or with the persons jointly, if more than one, to whom the conveyance is made as joint tenants, or with each of the persons, if more than one, to whom the conveyance is made as joint tenants, or with each of the persons, if more than one, to whom the conveyance is made as tenants in common, that is to say:—

Covenants  
for title to  
be implied.

- (a) In a conveyance for valuable consideration, other than a mortgage, the following covenant by a person who conveys and is expressed to convey as beneficial owner, namely:

That notwithstanding anything by the person who so conveys, or anyone through whom he derives title, otherwise than by purchase for value, made, done, executed or omitted, or knowingly suffered, the person who so conveyed has, with the concurrence of every other person, if any, conveying by his direction, full power to convey the subject matter expressed to be conveyed, subject as, if so expressed, and in the manner in which, it is expressed to be conveyed; and that, notwithstanding anything as aforesaid, the subject matter shall remain to and be quietly entered upon, received and held, occupied, enjoyed and taken by the person to whom the conveyance is expressed to be made, and any person deriving title under him, and the benefit thereof shall be received and taken accordingly, **without** any lawful interruption or disturbance, by the person who so conveys or any person conveying by his direction, or rightfully claiming or to claim by, through, under or in trust for the person who so conveys, or any person conveying by his direction, or by, through or under anyone not being a person claiming in respect of an estate or interest, subject whereto the conveyance is expressly made, through whom the person who so conveys derives title, otherwise than by purchase for value; and that, freed and discharged from, or otherwise by the person who so conveys sufficiently indemnified against, all such estates, incumbrances, claims and demands, other than those subject to which the conveyance is expressly made, as either before or after the date of the conveyance have been or shall be made, occasioned or suffered by that person, or by any person conveying by his direction, or by any person rightfully claiming by, through, under or in trust for the person who so conveys, or by, through or under any person conveying by his direction, or by, through, or under anyone through whom the person who so conveys derives title, otherwise than by purchase for value; and further, that the person who so conveys and any person conveying by his direction and every other person having or rightfully claiming any estate or interest in the subject matter of conveyance, other than an estate or interest subject whereto

the conveyance is expressly made, by, through, under or in trust for the person who so conveys, or by, through or under any person conveying by his direction, or by, through, or under anyone through whom the person who so conveys derives title, otherwise than by purchase for value, will, from time to time and at all times after the date of the conveyance, on the request and at the cost of any person to whom the conveyance is expressed to be made, or of any person deriving title under him, execute and do all such lawful assurances and things for further or more perfectly assuring the subject matter of the conveyance to the person to whom the conveyance is made, and to those deriving title under him, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made as by him or them, or any of them, shall be reasonably required:

[In which covenant a purchase for value shall not be deemed to include a conveyance in consideration of marriage.]

- (b) In a conveyance of leasehold property for valuable consideration, other than a mortgage, the following further covenant by a person who conveys and is expressed to convey as beneficial owner, namely:

That notwithstanding anything by the person who so conveys, or any one through whom he derives title otherwise than by purchase for value, made, done, executed, or omitted, or knowingly suffered, the lease or grant creating the term or estate for which the land is conveyed is, at the time of conveyance, a good, valid, and effectual lease or grant of the property conveyed, and is in full force, unforfeited, unsurrendered, and in no wise become void or voidable, and that notwithstanding anything as aforesaid, all the rents reserved by, and all the covenants, conditions, and agreements contained in the lease or grant, and on the part of the lessee or grantee, and the persons deriving title under him to be paid, observed, and performed, have been paid, observed and performed, up to the time of conveyance:

[In which covenant a purchase for value shall not be deemed to include a conveyance in consideration of marriage.]

- (c) In a conveyance by way of mortgage, the following covenant by a person who conveys and is expressed to convey as beneficial owner, namely:

That the person who so conveys has, with the concurrence of every other person, if any, conveying by his direction, full power to convey the subject matter expressed to be conveyed by him, subject as, if so expressed and in the manner in which it is expressed to be conveyed; and also that, if default is made in payment of the money intended to be secured by the conveyance, or any interest thereon, or any part of that money or interest, contrary to any provision in the conveyance, it shall be lawful for the person to whom the conveyance is expressed to be made and the persons deriving title under him, to enter into and upon, or receive, and thenceforth quietly hold, occupy and enjoy, or take and have, the subject matter expressed to be conveyed, or any part thereof, without any lawful interruption or disturbance by the person who so conveys, or any person conveying by his direction, or any other person not being a person claiming in respect of an estate or interest subject whereto the conveyance is expressly made; and that, freed and discharged from, or otherwise by the person who so conveys sufficiently indemnified against, all estates, incumbrances, claims and demands whatever, other than those subject whereto the conveyance is expressly made; and further, that the person who so conveys, and every person conveying by his direction, and every person deriving title under any of them, and every other person having or rightfully claiming any estate or interest in the subject matter of conveyance, or any part thereof, other than an estate or interest subject whereto the conveyance is expressly made, will, from time to time and at all times, on the request of any person to whom the conveyance is expressed to be made, or of any person deriving title under him, but as long as any right of redemption exists under the conveyance, at the cost of the person

so conveying or of those deriving title under him, and afterwards at the cost of the person making the request, execute and do all such lawful assurances and things for further or more perfectly assuring the subject matter of conveyance, and every part thereof, to the person to whom the conveyance is made and to those deriving title under him, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made, as by him or them, or any of them, shall be reasonably required.

- (d) In a conveyance by way of mortgage of leasehold property, the following further covenant by a person who conveys and is expressed to convey as beneficial owner, namely:

That the lease or grant creating the term or estate for which the land is held is at the time of conveyance a good, valid and effectual lease or grant of the land conveyed, and is in full force, unforfeited and unsurrendered, and in no wise become void or voidable, and that all the rents reserved by, and all the covenants, conditions and agreements contained in the lease or grant and on the part of the lessee or grantee and the persons deriving title under him, to be paid, observed and performed, have been paid, observed and performed, up to the time of conveyance; and also that the person so conveying or the persons deriving title under him, will at all times, so long as any money remains on the security of the conveyance, pay, observe and perform, or cause to be paid, observed or performed, all the rents reserved by, and all the covenants, conditions and agreements contained in the lease or grant and on the part of the lessee or grantee and the persons deriving title under him, to be paid, observed and performed, and will keep the person to whom the conveyance is made, and those deriving title under him, indemnified against all actions, proceedings, costs, charges, damages, claims and demands, if any, to be incurred or sustained by him or them by reason of the non-payment of such rent, or the non-observance or non-performance of such covenants, conditions, and agreements, or any of them.

- (e) In a conveyance by way of settlement the following covenant by a person who conveys and is expressed to convey as settlor, namely:

That the person so conveying, and every person deriving title under him by deed or act or operation of law in his lifetime subsequent to that conveyance, or by testamentary disposition or devolution in law on his death, will, from time to time and at all times after the date of that conveyance, at the request and cost of any person deriving title thereunder, execute and do all such lawful assurances and things for further or more perfectly assuring the subject matter of the conveyance to the persons to whom the conveyance is made and those deriving title under them, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made, as by them, or any of them, shall be reasonably required.

- (f) In a conveyance the following covenant by every person who conveys and is expressed to convey as trustee or mortgagee, or as personal representative of a deceased person, or as guardian of a lunatic, or under an order of the Court, which covenant shall be deemed to extend to every such person's own acts, namely:

That the person so conveying has not executed or done, or knowingly suffered, or been party or privy to any deed or thing whereby or by means whereof the subject matter of the conveyance, or any part thereof, is or may be impeached, charged, affected, or incumbered in title, estate or otherwise, or whereby or by means whereof the person who so conveys is in any wise hindered from conveying the subject matter of the conveyance, or any part thereof, in the manner in which it is expressed to be conveyed.

- (2) When, in a conveyance, it is expressed that by direction of a person expressed to direct as beneficial owner another person conveys, then within this section, the person giving the direction, whether he conveys and is expressed to convey as beneficial owner or not, shall be deemed to convey and to be expressed to convey as beneficial owner the subject matter so

conveyed by his direction; and a covenant on his part shall be implied accordingly.

(3) Where, in a conveyance, a person conveying is not expressed to convey as beneficial owner, or as settlor, or as trustee, or as mortgagee or as personal representative of a deceased person, or as guardian of a lunatic, or under order of the Court, or by direction of a person as beneficial owner, no covenant on the part of the person conveying shall be by virtue of this section implied in the conveyance.

(4) The benefit of a covenant implied as aforesaid shall be annexed and incident to, and shall go with the estate or interest of the implied covenantee, and shall be capable of being enforced by every person in whom that estate or interest is, for the whole or any part thereof, from time to time vested.

(5) A covenant implied as aforesaid may be varied or extended by deed, and as so varied or extended, shall, as far as may be, operate in the like manner, and with all the like incidents, effects and consequences as if such variations or extensions were directed in this section to be implied.

(6) This section applies only to conveyances made after the sixth day of August Anno Domini one thousand eight hundred and ninety-six.

#### SALE—INSURANCE.

5.—(1) A mortgagee, where the mortgage is made by deed, shall, by this Act, have the following powers to the like extent as if they had been in terms conferred by the mortgage deed but not further, namely,

Powers incident to estate or interest of mortgagee.

- (a) a power, where the mortgage money, whether principal or interest, has become due, to sell or to concur with any other person in selling the mortgaged property, or any part thereof, either subject to prior charges or not, and either together or in lots by public auction or by private contract, subject to such conditions respecting title, or evidence of title or other matter, as he (the mortgagee) thinks fit, with power

to vary any contract for sale, and to buy in at an auction, or to rescind any contract for sale, and to resell without being answerable for any loss occasioned thereby; and

- (b) a power, at any time after the date of the mortgaged deed, to insure and keep insured against loss or damage by fire any building or any effects or property of any insurable nature, whether affixed to the freehold or not, being or forming part of the mortgaged property; and the premiums paid for any such insurance shall be a charge on the mortgaged property in addition to the mortgage money and with the same priority, and with interest at the same rate as the mortgage money.

(2) The provisions of this Act relating to the foregoing powers, comprised either in this section or in any subsequent section, regulating the exercise of those powers, may be varied or extended by the mortgage deed, and as so varied or extended shall, as far as may be, operate in the like manner, and with all the like incidents, effects and consequences as if such variations or extensions were contained in this Act.

(3) This section applies only if and as far as a contrary intention is not expressed in the mortgage deed, and shall have effect subject to the terms of the mortgage deed and to the provisions therein contained.

Regulation of  
exercise of  
power of sale.

(4) This section applies only where the mortgage deed is executed after the sixth day of August Anno Domini one thousand eight hundred and ninety-six.

**6.** A mortgagee shall not exercise the power of sale conferred by this Act unless and until

- (a) notice requiring payment of the mortgage money has been served on the mortgagor or one of several mortgagors and default has been made in payment of the mortgage money, or of part thereof, for one month after such service; or

- (b) some interest under the mortgage is in arrear and unpaid for one month after becoming due; or
- (c) there has been a breach of some provision contained in the mortgage deed, or in this Act, and on the part of the mortgagor, or of some person concurring in making the mortgage, to be observed or performed, other than and besides a covenant for payment of the mortgage money or interest thereon.

7.—(1) A mortgagee exercising the power of sale conferred by this Act shall have power by deed to convey the property sold for such estate and interest therein as is the subject of the mortgage, freed from all estates, interests and rights to which the mortgage has priority, but subject to all estates, interests and rights which have priority to the mortgage.

Conveyance  
receipt, etc.,  
on sale.

(2) Where a conveyance is made in professed exercise of the power of sale conferred by this Act, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorize the sale, or that due notice was not given, or that the power was otherwise or irregularly exercised; but any person damnified by an unauthorized or improper or irregular exercise of the power, shall have his remedy in damages against the person exercising the power.

(3) The money which is received by the mortgagee arising from the sale, after the discharge of prior incumbrances to which the sale is not made subject, if any, shall be held by him in trust to be applied by him, first, in payment of all costs, charges and expenses properly incurred by him as incident to the sale or any attempted sale, or otherwise; and, secondly, in discharge of the mortgage money interest and costs, and other money, if any, due under the mortgage; and the residue of the money so received shall be paid to the person entitled to the mortgaged property, or authorized to give receipts for the proceeds of the sale thereof.

(4) The power of sale conferred by this Act may be exercised by any person for the time being entitled to receive and give a discharge for the mortgage money.

(5) The power of sale conferred by this Act shall not affect the right of foreclosure.

(6) The mortgagee, his executors, administrators or assigns shall not be answerable for any involuntary loss happening in or about the exercise or execution of the power of sale conferred by this Act or of any trust connected therewith.

(7) At any time after the power of sale conferred by this Act has become exercisable, the person entitled to exercise the same may demand and recover from any person, other than a person having in the mortgaged property an estate, interest or right in priority to the mortgage, all the deeds and documents relating to the property, or to the title thereto, which a purchaser under the power of sale would be entitled to demand and recover from him.

Mortgagee's receipts, discharges, etc.

**8.**—(1) The receipt in writing of a mortgagee shall be a sufficient discharge for any money arising under the power of sale conferred by this Act, or for any money or securities comprised in his mortgage, or arising thereunder; and a person paying or transferring the same to the mortgagee shall not be concerned to inquire whether any money remains due under the mortgage.

(2) Money received by a mortgagee under his mortgage, or from the proceeds of securities comprised in his mortgage, shall be applied in like manner as in this Act directed respecting money received by him arising from a sale under the power of sale conferred by this Act, but with this variation, that the costs, charges and expenses shall include the costs, charges and expenses properly incurred of recovering and receiving the money or securities, and of conversion of securities into money, instead of those incident to sale.

Amount and application of insurance money.

**9.**—(1) The amount of an insurance effected by a mortgagee against loss or damage by fire under the power in that behalf conferred by this Act, shall not exceed the amount specified in the mortgage deed, or, if no amount is therein specified, then shall not exceed two-third parts of the amount that would be required, in case of total destruction, to restore the property insured.

(2) An insurance shall not, under the power conferred by this Act, be effected by a mortgagee in any of the following cases, namely,

- (a) where there is a declaration in the mortgage deed that no insurance is required;
- (b) where an insurance is kept up by or on behalf of the mortgagee in accordance with the mortgage deed;
- (c) where the mortgage deed contains no stipulation respecting insurance, and an insurance is kept up by or on behalf of the mortgagor, to the amount in which the mortgagee is by this Act authorized to insure.

(3) All money received on an insurance effected under the mortgage deed or under this Act shall, if the mortgagee so requires, be applied by the mortgagor in making good the loss or damage in respect of which the money is received.

(4) Without prejudice to any obligation to the contrary imposed by law or by special contract, a mortgagee may require that all money received on an insurance be applied in or towards discharge of the money due under his mortgage.

#### ACTIONS RESPECTING MORTGAGES.

**10.**—(1) Any person entitled to redeem mortgaged property may have a judgement or order for sale, instead of for redemption, in an action brought by him either for redemption alone, or for sale or redemption, in the alternative.

Sale of mortgaged property in action for foreclosure.

(2) In any action, whether for foreclosure, or for redemption, or for sale, or for the raising and payment in any manner of mortgage money, the court, on the request of the mortgagee, or of any person interested either in the mortgage money or in the right of redemption, and notwithstanding the dissent of any other person, and notwithstanding that the mortgagee or any person so interested does not appear in the action, and without allowing any time for redemption or for payment of any mortgage money, may, if it thinks fit, direct a sale of the mortgaged property on such terms as it thinks fit, including, if

it thinks fit, the deposit in Court of a reasonable sum fixed by the Court to meet the expenses of sale and to secure performance of the terms.

(3) But in an action brought by a person interested in the right of redemption and seeking a sale, the Court may, on application of any defendant, direct the plaintiff to give such security for costs as the Court thinks fit, and may give the conduct of the sale to any defendant, and may give such directions as it thinks fit respecting the costs of the defendants, or any of them.

(4) In any case within this section the Court may, if it thinks fit, direct a sale without previously determining the priorities of incumbrances.

(5) This section applies to actions brought either before or after the commencement of this Act.

#### LEASES.

Short form  
of covenants  
in leases.

**11.** Where, in a lease of any chattels real for any term in consideration of an annual rental therein reserved and made payable, and of covenants and conditions to be performed and fulfilled

(a) the lessee covenants with the lessor

(i) to pay rent; such words shall have the effect and be construed as equivalent to the words following, that is to say:—That he, the lessee, will, during the said term, pay unto the lessor the rent hereby reserved in manner hereinbefore mentioned, without any deduction, defalcation or abatement whatsoever,

(ii) and to pay taxes; such words shall have the effect of and be construed as equivalent to the words following, that is to say:— And also will pay all taxes, rates, duties and assessments whatsoever, whether municipal, parliamentary or otherwise, now charged or hereafter to be charged upon the said demised premises or upon the said lessor on account thereof,

- (iii) and to repair; such words shall have the effect of and be construed as being equivalent to the words following, that is to say:— And also will, during the said term, well and sufficiently repair, amend, maintain and keep the said demised premises, with the appurtenances, in good and substantial repair, and all fixtures and things thereto belonging or which at any time during the said term shall be erected and made thereon when, where, and so often as need shall be,
- (iv) and that the lessor may enter and view the state of repair, and that the lessee will repair according to notice; such words shall have the effect of and be construed as being equivalent to the words following, that is to say:— And it is hereby agreed that it shall be lawful for the lessor and his agents at all reasonable times during the said term to enter the said demised premises to examine the condition thereof; and further, that all want of reparation that upon such view shall be found, and for the amendment of which notice in writing shall be left at the premises, the lessee will, within three calendar months next after such notice, well and sufficiently repair and make good accordingly,
- (v) and will not assign or sublet; such words shall have the effect of and be construed as being equivalent to the words following, that is to say:— And also that the lessee shall not, nor will, during the said term, assign, transfer or set over, or otherwise by any act or deed procure the said premises or any of them to be assigned, transferred, set over or sublet unto any person or persons whomsoever, without the consent, in writing, of the lessor first had and obtained,
- (vi) and that he will leave the premises in good repair; such words shall have the effect of and be construed as being equivalent to the words following, that is to say:— And further, the lessee

will, at the expiration or other sooner determination of the said term, peaceably surrender and yield up unto the lessor the premises hereby demised, with the appurtenances, together with the buildings, erections and fixtures thereon, in good and substantial repair and condition, reasonable wear and tear and damage by fire only excepted:

(vii) Provided that the lessor may re-enter upon non-payment of rent or non-performance of covenants; such words shall have the effect of and be construed as being equivalent to the words following, that is to say: Provided always, and it is hereby expressly agreed, that if the rent hereby reserved, or any part thereof, shall be unpaid for ten days after any of the days on which the same ought to have been paid, although no formal demand shall have been made thereof, or in case of the breach or non-performance of any of the covenants or agreements herein contained on the part of the lessee, then and in either of such cases it shall be lawful for the lessor at any time hereafter into and upon the said demised premises, or any part thereof, in the name of the whole, to re-enter and the same to have again, repossess and enjoy as of his former estate, anything herein contained to the contrary notwithstanding;

(b) the lessor covenants with the lessee for quiet enjoyment; such words shall have the effect of and be construed as being equivalent to the words following, that is to say:—That he the said lessee paying the rent hereby reserved and performing the covenants hereinbefore on his part contained, shall and may peaceably possess and enjoy the said demised premises for the term hereby granted without any interruption or disturbance from the lessor or any person lawfully claiming by or under him.

## POWERS OF ATTORNEY.

**12.**—(1) The donee of a power of attorney may, if he thinks fit, execute any deed in and with his own name and signature and his own seal, by the authority of the donor of the power; and every deed so executed shall be as effectual in law, to all intents, as if it had been executed by the donee of the power in the name and with the signature and seal of the donor thereof.

Execution under power of attorney.

(2) This section applies to powers of attorney created by deed executed either before or after the commencement of this Act.

**13.**—(1) Any person making or doing any payment or act in good faith, in pursuance of a power of attorney, shall not be liable in respect of the payment or act by reason that before the payment or the act the donor of the power had died or become lunatic, of unsound mind, or insolvent, or had revoked the power, if the fact of death, lunacy, unsoundness of mind, insolvency, or revocation was not at the time of the payment or act known to the person making or doing the same.

Payment by attorney under power without notice of death, etc., good.

(2) But this section shall not affect any right against the payee of any person interested in any money so paid; and that person shall have the like remedy against the payee as he would have had against the payer if the payment had not been made by him.

(3) This section applies only to payments and acts made and done after the commencement of this Act.

**14.**—(1) If a power of attorney, given for valuable consideration, is in the deed creating the power expressed to be irrevocable, then, in favor of a purchaser:

Effect of power of attorney for value made absolutely irrevocable.

(a) the power shall not be revoked at any time, either by anything done by the donor of the power, without the concurrence of the donee of the power, or by the death, marriage, lunacy, unsoundness of mind, or insolvency of the donor of the power; and

- (b) any act done at any time by the donee of the power, in pursuance of the power, shall be as valid as if anything done by the donor of the power, without the concurrence of the donee of the power, or the death, marriage, lunacy, unsoundness of mind, or insolvency of the donor of the power, had not been done or happened; and
- (c) neither the donee of the power nor the purchaser shall at any time be prejudicially affected by notice of anything done by the donor of the power, without the concurrence of the donee of the power, or of the death, marriage, lunacy, unsoundness of mind, or insolvency of the donor of the power.

(2) This section applies only to powers of attorney created by deeds executed after the commencement of this Act.

Effect of power of attorney for value or not made irrevocable for fixed time.

**15.**—(1) If a power of attorney, whether given for valuable consideration or not, is in the instrument creating the power expressed to be irrevocable for a fixed time therein specified, not exceeding one year from the date of the instrument, then in favor of a purchaser

- (a) the power shall not be revoked for and during that fixed time either by anything done by the donor of the power, without the concurrence of the donee of the power, or by the death, marriage, lunacy, unsoundness of mind, or insolvency of the donor of the power; and
- (b) any act done within that fixed time by the donee of the power, in pursuance of the power, shall be as valid as if anything done by the donor of the power without the concurrence of the donee of the power, or the death, marriage, lunacy, unsoundness of mind, or insolvency of the donor of the power, had not been done or happened; and
- (c) neither the donee of the power nor the purchaser shall at any time be prejudicially affected by notice, either during or after that fixed time, of anything done by

the donor of the power during that fixed time, without the concurrence of the donee of the power, or of the death, marriage, lunacy, unsoundness of mind, or insolvency of the donor of the power, within that fixed time.

(2) This section applies only to powers of attorney created by deeds executed after the commencement of this Act.

#### CONSTRUCTION OF DEEDS.

**16.**—(1) A receipt for consideration money or securities in the body of a deed, shall be a sufficient discharge for the same to the person paying or delivering the same, without any further receipt for the same being endorsed on the deed.

Receipt in deed sufficient.

(2) A receipt for consideration money or other consideration in the body of a deed, or endorsed thereon shall, in favor of a subsequent purchaser, not having notice that the money or other consideration thereby acknowledged to be received was not, in fact, paid or given, wholly or in part, be sufficient evidence of the payment or giving of the whole amount thereof.

(3) This section applies only to deeds executed after the commencement of this Act.

**17.** A covenant relating to land shall be deemed to be made with the covenantee, his executors, administrators, and assigns, and shall have effect as if executors, administrators and assigns were mentioned.

Covenants to bind executors, etc.

**18.**—(1) A covenant, and a contract under seal, and a bond or obligation under seal, though not expressed to bind the executors, administrators and estate, shall operate in law to bind the executors and administrators and estate of the person making the same as if these words were expressed.

Covenants to extend to executors, etc.

(2) This section extends to a covenant implied by virtue of this Act.

(3) This section applies only if and as far as a contrary intention is not expressed in the covenant, contract, bond or

obligation, and shall have effect subject to the terms thereof and to the provisions therein contained.

(4) This section applies only to a covenant, contract, bond or obligation made or implied after the commencement of this Act.

Provision for all the estate, etc.

**19.**—(1) Every conveyance shall, by virtue of this Act, be effectual to pass all the estate, right, title, interest, claim and demand which the conveying parties respectively have in, to, or on the property conveyed, or expressed or intended so to be, or which they respectively have power to convey in, to, or on the same.

(2) This section applies only if and as far as a contrary intention is not expressed in the conveyance, and shall have effect subject to the terms of the conveyance and to the provisions therein contained.

(3) This section applies only to conveyances made after the commencement of this Act.

Construction of implied covenants.

**20.** In the construction of a covenant or proviso, or other provision, implied in a deed by virtue of this Act, words importing the singular or plural number, or the masculine gender, shall be read as also importing the plural or singular number or as extending to females, as the case may require.

#### MISCELLANEOUS.

Notices.

**21.**—(1) Any notice required or authorized by this Act to be served shall be in writing.

(2) Any notice required or authorized by this Act to be served on a lessee or mortgagor shall be sufficient, although only addressed to the lessee or mortgagor by that designation, without his name, or generally to the persons interested, without any name, and notwithstanding that any person to be affected by the notice is absent, under disability, unborn or unascertained.

(3) Any notice required or authorized by this Act to be served shall be sufficiently served if it is left at the last known place of abode or business in this province of the person to

be served, or, in case of a notice required or authorized to be served on a mortgagor, is affixed or left for him on the land or any house or building comprised in the mortgage.

(4) Any notice required or authorized by this Act to be served shall also be sufficiently served if it is sent by post in a registered letter addressed to the person to be served, by name, at the aforesaid place of abode or business, office or counting house, and if that letter is not returned through the post office undelivered; and that service shall be deemed to be made at the time at which the registered letter would in the ordinary course be delivered.





## CHAPTER 64

### An Act to Provide for Loans to Co-operative Societies and to Create a Co-operative Development Loan Board for Newfoundland

- 1.** This Act may be cited as The Co-operative Development Loan Act. Short title.
- 2.** In this Act and in any regulations made thereunder unless the context otherwise requires Interpretation.
- (a) "bank" means a bank to which the *Bank Act (Canada)* applies;
  - (b) "Board" means the board created by this Act;
  - (c) "Fund" means the fund created by this Act;
  - (d) "Minister" means the Minister of Mines, Agriculture and Resources or such other Minister as the Lieutenant-Governor in Council charges with the administration of this Act;
  - (e) "regulations" means regulations made under this Act;
  - (f) "society" means a Co-operative Society registered under The Co-operative Societies Act.
- 3.** The Minister is charged with the general administration of this Act. Minister to administer Act.
- 4.—(1)** There shall be a Board to be called the Co-operative Development Loan Board of Newfoundland consisting of not fewer than five members to be appointed by the Lieutenant-Governor in Council. Co-operative Development Loan Board created.
- (2) The Lieutenant-Governor in Council shall designate one member to be chairman of the Board to hold office upon such

terms and conditions as the Lieutenant-Governor in Council deems fit and the Lieutenant-Governor in Council may enter into an agreement with the chairman to have effect from a date either before or after the signing thereof setting forth those terms and conditions and the chairman shall hold and vacate office in accordance with his agreement.

(3) The Lieutenant-Governor in Council may make regulations to provide for the establishment of a pension scheme for the chairman or for his dependents or for both.

(4) Subject to subsection (2), the members of the Board shall be appointed for one year and are eligible for re-appointment.

(5) If any vacancy occurs in the Board by reason of the death, resignation, or illness of a member, or for any reason considered by the Minister to be sufficient, the Lieutenant-Governor in Council may appoint a person to replace him.

(6) Nothing in this Act shall be construed to prevent the Lieutenant-Governor in Council from designating any members of the Board to be members of any other Board.

(7) A majority of the members of the Board shall constitute a quorum.

(8) The members of the Board, except employees in the Civil Service of Newfoundland, shall receive such remuneration and allowances as may be determined by the Lieutenant-Governor in Council.

(9) The Board shall be a body corporate.

Staff.

**5.** The Lieutenant-Governor in Council may from time to time appoint such other officers, assistants, supervisors, clerks and other employees as may be necessary for the purposes of this Act and such appointees, except employees in the Civil Service of Newfoundland, shall receive such remuneration and allowances as may from time to time be determined by the Lieutenant-Governor in Council.

**6.** There shall be a fund for the purposes of this Act to be known as the Co-operative Development Loan Fund into which all moneys appropriated by the Legislature or otherwise received for the purposes of this Act shall be paid.

Co-operative Development Loan Fund.

**7.** The Board shall, in accordance with the regulations, administer the Fund and such other moneys as from time to time come under its control for the purpose of encouraging societies to develop and improve the industries, commerce and services of Newfoundland, particularly, but not so as to restrict the generality of the foregoing, by making loans to societies for assisting in the construction of plants and the purchase of plant equipment generally, and for other types of expenditures which in the opinion of the Board are proper expenditures for which loans should be made by it.

Board to administer fund and make loans.

**8.** Where a bank has made a loan for a purpose prescribed by this Act or the regulations in pursuance of an application made to and approved by the Board, the Board may guarantee the repayment of the loan.

Board may guarantee loans.

**9.** The Board may enter into any agreement or agreements with the Government of Canada or with any organization, whether public or private, for the better carrying out of the purposes of this Act on such terms and conditions as may be approved by the Lieutenant-Governor in Council.

Board may enter into agreements.

**10.**—(1) All repayments in respect of any loan made by the Board including any interest thereon and including the proceeds of the sale of all property repossessed by the Board shall be paid into the Fund.

Payments into and out of Fund.

(2) All moneys received by the Board shall be deposited to the credit of the Fund in an account to be kept by the Minister of Finance and all moneys required by the Board shall be paid out of the Fund by the Minister of Finance following a recommendation or approval by the Board.

**11.**—(1) The Board may, subject to the approval of the Lieutenant-Governor in Council, make regulations

Regulations.

(a) prescribing the manner in which applications for loans are to be made;

- (b) prescribing the terms and conditions on which loans may be made;
- (c) prescribing the manner and conditions on which a society may sell or transfer any plant, plant equipment or other property in respect of which a loan has not been repaid;
- (d) prescribing or limiting the amount of any loan;
- (e) deferring the payment of the whole or any part of any loan for such reasons as the Board may in its discretion determine;
- (f) fixing the rate of interest on loans, not, however, to exceed five per centum per annum;
- (g) providing for the commuting of any payments due to the Board;
- (h) prescribing the form of any mortgage and the manner of its execution;
- (i) prescribing or regulating the form and contents of any agreement between a society and a contractor for the construction of a plant or the installation of any equipment therein in respect of which a loan may be made or guaranteed;
- (j) prescribing or approving the design, plans, and specifications for plants, plant equipment, or constructions in respect of which a loan may be made or guaranteed;
- (k) prescribing the purposes for which loans may be made;
- (l) prescribing, in the event of default in the repayment of a guaranteed loan, the legal or other measures to be taken by the bank and the procedure to be followed for the collection of the amount of the loan outstanding, the disposal or realization of any security for the repayment thereof held by the bank and the rate of interest to be charged on overdue payments;

- (m) prescribing the method of determination of the amount of loss sustained by a bank as a result of default in repayment of a guaranteed loan and the procedure to be followed by a bank in making a claim for loss sustained by it in respect of a guaranteed loan;
- (n) prescribing the steps to be taken by a bank to effect on behalf of the Minister collection of any guaranteed loan in respect of which payment has been made by the Minister to the bank under this Act, and providing that on failure by the said bank to take such steps the amount of such payment may be recovered from the bank by the Minister;
- (o) requiring reports to be made periodically to the Minister by a bank in respect of guaranteed loans;
- (p) prescribing the manner in which meetings of the Board are to be called, the time and place of such meetings and the manner in which business is to be conducted at such meetings;
- (q) in relation to any matter or thing for the more effective carrying out of the purposes of this Act, whether or not such matter or thing is of the kind enumerated in this section.

(2) Any such regulations shall have effect from the date of publication in *The Newfoundland Gazette* or such other date as may be stated in the regulations and the regulations shall be laid before the Legislature within fifteen days after they are made if the Legislature is then in session, and, if not, then within fifteen days of the commencement of the next ensuing session.

**12.—(1)** Every person, other than a civil servant as defined in The Civil Service Act, employed on the work of the Board whose duty it may be to receive or handle moneys on behalf of the Board shall, before entering upon the duties of his office, furnish a bond or covenant of some guarantee company to be approved by the Minister, to secure the due accounting by him for all moneys that may come into his hands.

Bond to be  
furnished by  
certain  
employees.

(2) Every such bond or covenant shall be in such form and for such amount as the Board determines and the Board shall pay the premium for such bond or covenant.

Financial year  
of Board.

**13.** The financial year of the Board shall correspond to the financial year of the Government of Newfoundland.

Board to  
submit report  
to Minister.

**14.** The Board shall, not later than the thirtieth day of May in each year, prepare and submit to the Minister a financial statement setting forth the assets and liabilities of the Board and the receipts and expenditures of the Board for the previous financial year, together with a report concerning the work of the Board during the previous financial year, and the statement and report shall be laid before the Legislature within fifteen days after they are submitted to the Minister, if the Legislature is then sitting, and, if not, then within fifteen days after the commencement of the next ensuing session.

Financial  
statement.

**15.** The financial statement referred to in Section 14 shall be signed by the Chairman and one other member of the Board and certified by the Auditor General and shall have attached thereto any report thereon which the Auditor General may have made to the Board.

Minutes to  
be kept.

**16.** The Chairman of the Board shall keep or cause to be kept regular minutes of the meetings of the Board and shall ensure that full and complete books of account and records are kept.

Audit of  
accounts.

**17.—(1)** The Auditor General shall audit the accounts of the Board and has at all times authority to call for and shall be supplied by the Board with all books and vouchers which he deems necessary for his audit.

(2) Whenever the Auditor General makes an interim examination of the accounts of the Board during the course of a financial year he shall submit a report of the examination to the Chairman of the Board and to the Minister and the Minister shall lay the report before the Legislature with the statement and report referred to in Section 14.



## CHAPTER 65

### An Act Respecting Co-operative Societies

1. This Act may be cited as The Co-operative Societies Act. Short title.
2. In this Act, unless the context otherwise requires Interpretation.
  - (a) "committee" means the Board of Directors or other governing body of a registered society to whom the management of its affairs is entrusted;
  - (b) "constitution" means the registered constitution, rules and regulations for the time being in force made by a registered society, and includes a registered amendment to such constitution, rules and regulations;
  - (c) "member" includes
    - (i) a natural person,
    - (ii) a registered society,
    - (iii) the City of St. John's or any municipal authority as defined by The Department of Municipal Affairs Act,
    - (iv) a municipal or public body performing a function of government,
    - (v) the corporation of a hospital,
    - (vi) an organization operated exclusively for charitable purposes, no part of the income of which is payable to or otherwise available for the personal benefit of any proprietor, member or shareholder thereof,

- (vii) a religious organization or society,
- (viii) a labour organization or society or a benevolent or fraternal society or order, and
- (ix) a club, society or other organization operated exclusively for social welfare, civic improvement, education, pleasure or recreation or for any other purpose except profit, no part of the income of which is payable to or otherwise available for the personal benefit of any proprietor, member or shareholder thereof

joining in the application for the registration of a society or admitted to membership in accordance with the constitution;

- (d) "Minister" means the Minister to whom for the time being the subject of Co-operative Societies shall be assigned by the Lieutenant-Governor in Council;
- (e) "officer" includes a president, chairman, secretary, treasurer, member of a Board of Directors, member of a committee or other person empowered under the constitution to give directions relating to the business of a registered society;
- (f) "registered society" means a society registered under this Act;
- (g) "Registrar" means a person appointed to perform the duties of a Registrar of Co-operative Societies under this Act;
- (h) "Rules" means rules made under this Act.

Manner of voting, etc., by corporations and other bodies.

**3.** Subject to any Rules made under Section 67, any corporation, body, organization, society, order or club referred to in any of subparagraphs (iii) to (ix) of paragraph (c) of Section 2 joining in the application for registration of a society or voting or otherwise acting in the affairs of a society shall do so only by one natural person designated in writing by such corporation, body, organization, society, order or club as the representative thereof.

## REGISTRATION.

4.—(1) The Lieutenant-Governor in Council shall appoint a Registrar of Co-operative Societies for Newfoundland and may appoint persons to assist such Registrar, and may by general or special order confer upon any such person all or any of the powers of the Registrar under this Act.

The Registrar.

(2) The Registrar shall have a seal of such device as may be approved by the Minister. Impressions of such seal shall be judicially noticed and admitted in evidence.

Seal of Registrar.

(3) There shall be an office in St. John's called the Registry of Co-operative Societies, which shall be the office of the Registrar and the place of filing and deposit of all public documents relating to Co-operative Societies.

Registered office.

5.—(1) Subject to this Act,

Societies which may be registered.

(a) societies which have as their object the promotion of the economic or social interests, or both such interests, of their members; or

(b) societies which have, as their main purpose, the provision of services for community welfare

in accordance with co-operative principles, or societies

(c) established to promote the advancement of any or all of the societies referred to in paragraph (a) or (b), or in both paragraphs,

may be registered under this Act with limited liability.

(2) For the purposes of this section the expression "co-operative principles" includes

Definition.

(a) open membership, subject to such natural limitations as may be prescribed by the constitution of the society;

(b) one member one vote, with no proxy voting;

- (c) low interest on capital; and
- (d) the return or credit to members, in proportion to patronage, of the net surplus of the society remaining after provision is made for expenses of operation, bonuses, interest on capital, if any, and reserves, or the collective use of such net surplus for the social or economic benefit of members, or the disposal of it for any of those objects.

Restriction on interest of member of society with limited liability and share capital.

**6.** Where the liability of the members of a society is limited by shares, no member other than a registered society shall hold more than such portion of the share capital of the society, subject to a maximum of one-fifth, as may be prescribed by the Rules.

Conditions of registration.

**7.—(1)** No society other than a society of which a member is a registered society shall be registered under this Act which does not consist of at least five persons of full legal capacity and residing in Newfoundland.

(2) The word “co-operative” shall be included in, and the word “limited” shall be the last word of, the name of every society registered under this Act.

(3) No society shall be registered under a name which is identical with that by which any other existing society is registered or which, in the opinion of the Registrar, so nearly resembles the name of an existing registered society that it is likely to deceive or to cause confusion, or is for any other reason whatsoever objectionable.

(4) Where a society is registered contrary to subsection (3) the society shall, upon the request of the Registrar, change its name.

(5) Where a society is requested by the Registrar under subsection (4) to change its name and fails to do so within ninety days after the receipt of the request in writing, the Registrar may make the change of name by substituting any name which he deems not to be objectionable.

(6) Where a change of the name of a society is made under subsection (4) or (5) the Registrar shall enter the substituted name on the register in place of the name which was changed and shall issue an altered certificate of registration to conform with the change of name.

(7) A change of the name of a registered society made under this section shall not affect any right or obligation of the society, or any punishment, penalty or forfeiture incurred, or any proceeding taken, by or in respect of the society before the change was made.

**8.**—(1) For purposes of registration an application to register shall be made to the Registrar in the prescribed form.

Application for registration.

(2) The application shall be signed

(a) in the case of a society of which no member is a registered society, by at least five persons qualified in accordance with the requirements of Section 7 (1); and

(b) in the case of a society of which a member is a registered society by a duly authorized person on behalf of every such society, and where all the members of a society are not registered societies by five other members.

(3) The application shall be accompanied by two copies of the proposed constitution of the society and the persons by whom or on whose behalf such application is made shall furnish such information in regard to the society as the Registrar may require.

**9.**—(1) Every society shall be of one of the kinds or classes prescribed in Rules made hereunder.

Classes of Co-operative Societies.

(2) The constitution of every registered society shall be substantially in the form prescribed by the Rules for a society of such kind or class: Provided that the Registrar may approve additions to or variations of such forms, not being contrary to anything in this Act or in any Rules made thereunder.

Constitution.

Registration.

**10.** If the Registrar is satisfied that a society has complied with the provisions of this Act and the Rules and that its proposed constitution is not contrary to the Act or to the Rules, he may, if he thinks fit, register the society and its constitution and shall issue to the society a certificate of registration having annexed thereto a copy of the constitution certified and sealed by him.

Evidence of registration.

**11.** A certificate of registration signed and sealed by the Registrar shall be conclusive evidence that the society therein mentioned is duly registered unless it is proved that the registration of the society has been cancelled.

Amendment of the constitution of a registered society.

**12.—(1)** No amendment of the constitution of a registered society shall be valid until the same has been registered under this Act, for which purpose two copies of the amendment shall be forwarded to the Registrar.

(2) If the Registrar is satisfied that the amendment of the constitution is not contrary to this Act or to any Rules made under this Act he may, if he thinks fit, register the amendment.

(3) When the Registrar registers an amendment of the constitution of a registered society, he shall issue to the society a copy of the said amendment certified and sealed by him which shall be conclusive evidence that the said amendment is duly registered.

#### RIGHTS AND LIABILITIES OF MEMBERS.

Member not to exercise rights until due payment made.

**13.** No member of a registered society shall exercise the rights of a member unless or until he has made such payment to the society in respect of membership or acquired such interest in the society as may be prescribed by the constitution.

Votes of members.

**14.** Each member, including any member represented by a designated natural person under Section 3, shall have one vote only as a member in the affairs of the society whatever the amount of the interest of such member therein: Provided that a registered society which is a member of any other registered society shall have as many votes as may be prescribed by the constitution of such other society, and may, subject to such con-

stitution appoint any number of its members not exceeding the number of such votes to exercise its voting power.

**15.**—(1) The transfer or charge of the share or interest of a member in the capital of a registered society in any case permitted by the Act or by Rules made thereunder or by its constitution shall be subject to such conditions as to maximum holding as may be prescribed by this Act or by the Rules or by its constitution.

Restrictions on transfer of share or interest.

(2) Subject to the approval of the Minister, the Registrar may, in respect of any registered society, restrict or prohibit, by notice in writing to the society, the withdrawal of any shares or any other interest of all members and the restriction or prohibition shall take effect from the date mentioned in the notice.

#### DUTIES OF REGISTERED SOCIETIES.

**16.** Every registered society shall have an address registered in accordance with the Rules, to which all notices and communications may be sent, and shall file with the Registrar notice of the address thereof and of every change thereof.

Address of societies.

**17.** Every registered society shall keep on file and at all reasonable times open to inspection free of charge at the registered office of the society, a copy of this Act, the Rules and its constitution.

Act, rules and constitution may be inspected

#### AUDIT AND ANNUAL RETURN.

**18.**—(1) The Registrar shall audit or cause to be audited by some person authorized by him by general or special orders in writing in this behalf the accounts of every registered society once at least in every financial year of the society subject as hereinafter provided.

Audit by or on behalf of Registrar.

(2) The audit under subsection (1) shall include an examination of overdue debts, if any, and a valuation of the assets and liabilities of the society: Provided that if such valuation is not made by the auditor himself he should state the basis on which and the authority by which it has been made.

(3) The Registrar or any person authorized by general or special order in writing in this behalf by the Registrar shall at all times have access to all books, records, accounts, deeds, documents, securities and other papers of a society and every officer of the society shall furnish such information in regard to the transactions and working of the society as the person making such inspection may require.

(4) The Registrar and every person authorized by him to audit the accounts of a society shall have power when necessary

- (a) to summon at the time of his audit any officer, agent, servant or member of the society who he has reason to believe can give valuable information in regard to any transactions of the society or the management of its affairs; and
- (b) to require the production of any books, records, accounts, deeds, documents, securities and other papers of or any cash belonging to the society by the officer, agent, servant or member in possession of such book, document, cash or securities.

(5) The Registrar may in his discretion accept in lieu of the audit by himself or by some person authorized by him under this section the audit of the society's auditors provided for under Section 19 of this Act.

Audit by persons appointed under provisions of constitution.

**19.—**(1) Every registered society shall once at least in every year submit its accounts for audit to one or more persons appointed as the constitution of the society provides.

(2) The auditors shall have access to all the books, records, accounts, deeds, documents, securities and other papers of the society, count the cash and verify the assets and securities of the society, and shall examine the statements showing the receipts and expenditures, funds and effects of the society and verify the same, and shall either sign the same as found by them to be correct, duly vouched, and in accordance with law, or specially report to the society in what respects they find them incorrect, unvouched or not in accordance with law.

(3) If the Registrar shall have audited or caused to be audited the accounts of a registered society he may in writing relieve such society of the obligation under this section in respect of the period covered by his audit.

**20.**—(1) Every registered society shall once in every year send to the Registrar an annual return of the receipts and expenditures, funds and effects of the society as audited. Annual return.

(2) The annual return

- (a) shall be made up to such date and shall cover such period as the Registrar may prescribe;
- (b) shall be signed by the auditors appointed by the society;
- (c) shall state the name, address and calling of every such auditor, and the manner in which, and the authority under which he is appointed;
- (d) shall show separately the expenditure in respect of the several objects of the society;
- (e) shall be delivered to the Registrar within six weeks after the end of the period referred to in paragraph (a) hereof or at such later date as the Minister may in special circumstances allow.

(3) The society shall, together with the annual return, send a copy of the report of the auditors, or, if more than one such report has been made during the period included in the return, a copy of each of such reports.

**21.** Every registered society shall supply gratuitously to every member or person interested in the funds of the society, on his application, a copy of the last annual return of the society. Right to copies of annual return.

**22.** Every registered society shall keep a copy of the last annual balance sheet for the time being, together with the report of the auditors, always hung up in a conspicuous place at the registered office of the society. Balance sheet and report to be displayed in office.

## INSPECTION OF BOOKS.

Inspection of  
books by  
members.

**23.**—(1) Save as provided by this Act, no member or person shall have any right to inspect the books of a registered society.

(2) Any member or person having an interest in the funds of a registered society shall be allowed to inspect his own account and the books containing the names of the members at all reasonable hours at the registered office of the society or at any place where the same are kept, subject to such regulations as to the time and manner of such inspection as may be made from time to time by the general meetings of the society.

(3) A registered society may, by its constitution, authorize the inspection of any of its books, in addition to the said books containing the names of the members under such conditions as are thereby imposed, but so that no person unless he be an officer of the society, or be specially authorized by a resolution thereof, shall have the right to inspect the loan or deposit account of any other member without the written consent of such other member.

## PRIVILEGES OF REGISTERED SOCIETIES.

Societies to be  
bodies corpor-  
ate.

**24.** The registration of a society shall render it a body corporate by the name under which it is registered, with perpetual succession and a common seal, and with power to hold movable and immovable property of every description, to enter into contracts, to institute and defend suits and other legal proceedings and to do all things necessary for the purposes of its constitution.

Constitution  
to have effect  
of mutual  
covenant.

**25.** Upon registration of the constitution of a society the society and its members shall be bound thereby to the same extent as if each member had subscribed his name and affixed his seal thereto and there were in such constitution a covenant on the part of himself, his executors, administrators and assigns to conform to such constitution subject to the provisions of this Act and the Rules made thereunder. An amendment to the constitution shall when registered be binding in like manner.

Age of  
members.

**26.** Subject to this Act and the constitution of a registered society, a person who is sixteen years of age or older may be a

member of the society, enjoy all rights of membership, execute all instruments and give all acquittances necessary to be executed or given under the constitution but a person who is under eighteen years of age may not be an officer of the society or a member of a committee.

**27.** A promissory note or bill of exchange shall be deemed to have been made, accepted or endorsed on behalf of any society, if made, accepted or endorsed in the name of the society, or by or on behalf or account of the society by any person acting under the authority of the society.

Promissory  
notes and bills  
of exchange.

**28.—(1)** Contracts on behalf of a registered society may be made, varied or discharged as follows

Contracts, how  
made, varied  
or discharged.

- (a) Any contract, which if made between private persons would be by law required to be in writing under seal, may be made on behalf of the society in writing, under the common seal of the society, and may in the same manner be varied or discharged.
- (b) Any contract, which if made between private persons would be by law required to be in writing and signed by the persons to be charged therewith, may be made on behalf of the society in writing by any person acting under the express or implied authority of the society, and may in the same manner be varied or discharged.
- (c) Any contract under seal which, if made between private persons, might be varied or discharged by a writing not under seal signed by any person interested therein, may be similarly varied or discharged on behalf of the society by a writing not under seal, signed by any person acting under the express or implied authority of the society.
- (d) Any contract, which if made between private persons would be by law valid though made by parole only and not reduced into writing, may be made by parole on behalf of the society by any person acting under the express or implied authority of the society and may in the same manner be varied or discharged.

- (e) A signature purporting to be made by a person holding any office in the society, attached to a writing whereby any contract purports to be made, varied or discharged by or on behalf of the society, shall *prima facie* be taken to be the signature of a person holding, at the time when the signature was made, the office so stated.

(2) All contracts which may be made, varied or discharged according to the provisions contained in this section, shall, so far as concerns the form thereof, be effectual in law and binding on the society and all other parties thereto, their executors or administrators, as the case may be.

Charges and  
prior rights  
of societies.

**29.**—(1) A registered society shall be deemed to have a first charge

- (a) in respect of the supply of agricultural requisites or of the loan of money for the purchase of the same—upon the crops or other agricultural produce of the member or person to whom the same was supplied or lent;
- (b) in respect of the supply of livestock for farming, breeding or like purposes or of agricultural implements or machinery—upon any such thing so supplied or purchased in whole or in part from any such loan or upon the progeny produced and the crops raised thereby;
- (c) in respect of the supply of industrial implements or machinery or raw materials for manufacture or the loan of money for purchase of any of the foregoing things—upon any such thing so supplied or produced in whole or in part from any such loan or in articles or goods manufactured by the machinery or with the raw materials so supplied or purchased;
- (d) in respect of the advance of supplies or equipment for any fishery or for the loan of money therefor—upon the fish or other products of such fishery caught or produced by such member or person at any time within one year from the date when the fishery supplies were advanced or the money was lent;

Provided that this section shall not affect the claim of any creditor to priority under the provisions of The Judicature Act, Sections 224 to 235, and provided that the society shall rank *pari passu* in case of insolvency with the current supplier within the meaning of Section 236 of the said Act.

(2) Subject as aforesaid any claim in respect of which a registered society has a charge under this section may be enforced upon the insolvency of such member or other person or by execution after judgment upon such of his property as above mentioned notwithstanding any prior attachment issued by any creditor not being a creditor having priority under the provisions of The Judicature Act aforesaid.

**30.**—(1) All moneys payable by a member to a registered society shall be a debt due from such member to the society and shall be recoverable as such.

Recovery of debts from member.

(2) A registered society shall have a charge upon the shares or interest in the capital and on the deposits of a member or past member, and upon any dividend, bonus, or accumulated funds payable to a member or past member, in respect of any debt due from such member or past member to such society, and may set off any sum credited or payable to a member or past member in or towards payment of any such debt.

Charge and set off in respect of shares or interest of member.

**31.** Subject to the provisions of Section 29 the share or interest of a member in the capital of a registered society shall not be liable to attachment or sale under any judgment or order of a court in respect of any debt or liability incurred by such member and a trustee in insolvency or other receiver under the law relating to bankruptcy for the time being in force, shall not be entitled to or have any claim on such share or interest.

Shares or interest not liable to attachment.

**32.**—(1) Subject to subsection (3), a registered society shall on the death of a member transfer the share or interest of that member to the person nominated in accordance with this Act and the Rules to receive such share or interest, or to the personal representative of the deceased member, if such nominee or representative is qualified under the constitution of the society to be a member thereof.

Transfer of shares or interest on death of member.

(2) Where a person nominated in accordance with subsection (1) to receive the share or interest of a deceased member of a registered society or the personal representative of that member so requests, within thirty days after the death of the member, the society shall subject to subsection (3), transfer the share or interest of the deceased member to any person named by the nominee or personal representative, if the person so named is qualified to be a member under the constitution of the society.

(3) A registered society may, instead of transferring the share or interest of a deceased member to any person under subsection (1) or (2), pay to that person an amount equal to the value of the share or interest of that member ascertained in accordance with the Rules and the constitution of the society.

(4) A registered society may pay all moneys not referred to in subsection (1) or (2) which are due in respect of a deceased member in the manner provided by this section for the transfer of the share or interest of a deceased member.

Register of members.

**33.** Any register or list of members or shares kept by any registered society shall be *prima facie* evidence of any of the following particulars entered therein

- (a) the date at which the name of any person was entered in such register or list as a member;
- (b) the date at which any such person ceased to be a member.

Proof of entries in societies' books

**34.** A copy of any entry in a book of a registered society regularly kept in the course of business, shall, if certified in such manner as may be prescribed by the Rules, be received, in any suit or legal proceeding, as *prima facie* evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as the original entry itself is admissible.

Exemption from stamp duties.

**35.** Notwithstanding anything contained in The Registration of Deeds Act or in any future Act of like effect which may be substituted therefor, it shall not be necessary to pay any fee or to affix any stamp for the registration of any deed or other docu-

ment by virtue of which any property passes to or from any society.

PROPERTY AND FUNDS OF REGISTERED SOCIETIES.

**36.**—(1) A registered society may, if its constitution permits, make loans to its members; and, subject to subsection (2), it shall not make a loan to any person who is not a member.

Restrictions on loans.

(2) A registered society may make a loan to another registered society which is not a member, with the approval in writing of the Registrar, who may, when giving his approval, limit the amount of the loan and prescribe the terms and conditions under which it may be advanced.

(3) The Minister may by general or special order prohibit or restrict the lending of money on the security of immovable property of any kind specified in such order by any registered society, or class of registered societies.

**37.** A registered society shall receive deposits and loans from persons who are not members only to such extent and under such conditions as may be prescribed by the Rules and subject to its constitution.

Restrictions on borrowing.

**38.** Save as provided in Sections 36 and 37 the transactions of a registered society with persons other than members shall be subject to such prohibitions and restrictions if any, as may be prescribed by the Rules and subject to its constitution.

Restriction on other transactions with non-members.

**39.** Where a registered society is authorized by or under this Act to engage in the purchase and distribution of commodities it may do so for cash only, but it may provide by amendment to its constitution for the issue of credit to any member not exceeding seventy-five per centum of his paid-up share capital, where in the opinion of the Registrar it is necessary to do so having regard to local circumstances, and when that provision is made it may advance such credit.

Restriction on credit.

**40.** A registered society the members of which are natural persons may provide services for its members which do not come within the objects of the society set forth in its constitution, if

Additional services.

- (a) the permission of the Minister was obtained in respect of each year in which the society proposes to commence or to continue the performance of the services; and
- (b) the regulations governing the services were adopted by the members of the society in general meeting assembled and were approved by the Registrar.

- Investment of funds.**           **41.** A registered society may invest or deposit its funds in the manner provided by the Rules.
- Advances to members.**       **42.** Subject to Section 36, the constitution of a registered society may provide for advances to members.
- Profits not to be distributed before balance sheet certified.**   **43.—**(1) No society shall pay a dividend or bonus in any financial year before the balance sheet for the period in respect of which such dividend or bonus is paid has been certified by an auditor approved by the Registrar.
- Limitation of dividends.**       (2) No society shall pay a dividend on share capital to its members exceeding seven per centum in any year.
- Reserve fund.**               **44.—**(1) Every society which does or can derive a surplus from its transactions shall maintain a reserve fund.
- (2) All societies shall carry to the reserve fund such portion of the net balance in each year as may be prescribed by their constitutions subject to the Rules, if any.
- Distribution of profits.**       **45.** Subject to Sections 43 and 44 and 46 of this Act the realized net balance of each year, with any sum available for distribution from previous years, may be distributed as may be prescribed by the constitution of the society, subject to the Rules, if any.
- Contribution to charitable and educational purposes.**   **46.** Any registered society may, with the previous sanction of the Registrar, after such allocation has been made to the reserve fund as the Rules and constitution require, contribute an amount not exceeding ten per centum of the remaining net balance to any charitable or educational purpose, including, without limiting the generality of the foregoing, the purpose of propagating co-operative principles.

## OFFICERS IN RECEIPT OR CHARGE OF MONEY.

**47.** Every officer of a registered society who receives or has charge of money shall, before assuming the duties of his office, furnish a bond, with such sureties and in a form and of an amount to be determined by the committee of the society, guaranteeing that he will duly account for all moneys received by him and will faithfully discharge his duties.

Bonding of officers.

## INSPECTION OF AFFAIRS.

**48.—(1)** The Registrar may of his own motion, and shall on the application of a majority of the committee or of not less than one-third of the members hold an enquiry or direct some person authorized by him by order in writing in this behalf to hold an enquiry into the constitution, working and financial condition of a registered society.

Enquiry by Registrar.

(2) All officers and members of the society shall produce such of the books and documents of the society and furnish such information in regard to the affairs of the society, as the Registrar or the person authorized by the Registrar may require.

**49.—(1)** When the Registrar is of the opinion that the financial position of a registered society as disclosed by an enquiry under Section 48 necessitates the appointment of an administrator, he may, subject to the approval of the Minister, appoint an administrator (referred to in this section as the "administrator") and fix his remuneration, if any.

Appointment of administrator.

(2) The administrator has all the powers and may perform all or any of the duties of the officers and is responsible to the Registrar for the conduct of the business of the society and shall carry out all orders and directions of the Registrar with respect to the society and may pay the expenses of administration out of the funds of the society.

Powers and responsibilities of administrator.

(3) When the administrator is appointed the directors and officers of the society shall not thereafter, so long as the administrator remains in charge of the conduct of the business of the society, exercise any of the powers conferred upon them under this Act and the constitution of the society.

Officers shall not exercise powers while administrator in charge.

Administrator  
to protect  
members and  
creditors.

(4) The administrator shall take all steps and do all things necessary to protect the interests of the members and the rights of the creditors of the society and shall maintain, so far as is practicable, the services of the society.

Administrator  
to have access  
to records, etc.

(5) For the purposes of this section, the administrator shall have access to all books, accounts, securities, vouchers and other documents, whether of the foregoing kind or not, of the society, as well as cash of the society and any security held by the society.

Administrator  
may report  
to members.

(6) Subject to the approval of the Registrar, the administrator may call a special meeting of the members of the society to report to them on the affairs of the society and the steps taken by him to protect their interests.

Administrator  
to conduct  
society's  
business.

(7) The administrator shall conduct the business of the society until the Registrar is satisfied to have the management of its affairs resumed by its directors and officers or until the society is dissolved and a liquidator is appointed to wind up its affairs.

Administrator  
may bring or  
defend actions.

(8) The administrator may bring or defend any action, suit, prosecution or other legal proceedings in the name and on behalf of the society and appear in any court in person on behalf of the society.

Inspection of  
books of in-  
debted society.

**50.—**(1) The Registrar shall, on the application of a creditor of a registered society, inspect or direct some person authorized by him by order in writing in this behalf to inspect the books of the society:

Provided that

- (a) the applicant satisfies the Registrar that the debt is a sum then due, and that he has demanded payment thereof and has not received satisfaction within a reasonable time; and
- (b) the applicant deposits with the Registrar such sum as security for the costs of the proposed inspection as the Registrar may require.

(2) The Registrar shall communicate the results of any such inspection to the creditor.

**51.** Where an enquiry is held under Section 48 or an inspection is made under Section 50 the Registrar may by a certificate under his hand make an award apportioning the costs, or such part of the costs as he may think right, between the society, the members or creditor demanding an enquiry or inspection and the officers or former officers of the society.

Costs of enquiry.

**52.** Any sum awarded by way of costs under Section 51 shall be deemed to be a debt due by the person against whom under the Registrar's certificate the same has been awarded to the Registrar and may be recovered by the Registrar in any court having jurisdiction to the amount claimed.

Recovery of costs.

**53.—(1)** Any two or more registered societies which are of the same or similar kind or class may, in accordance with this section, amalgamate and continue as one registered society.

Amalgamation.

(2) Each of the registered societies proposing to amalgamate shall submit the proposal for amalgamation to a general meeting of the society which shall be called for the purpose and the proposal may be approved by a resolution passed and confirmed in the manner provided in paragraph (c) of subsection (1) of Section 55.

Agreement.

(3) Each of the registered societies approving a proposal for amalgamation under subsection (2) shall advise the Registrar of that approval and provide him with such information about the proposal and other information, if any, as the Registrar may require.

Proposal to be submitted to Registrar.

(4) The Registrar shall, having regard to the rights and interests of all parties, including dissenting members and creditors, decide to

Registrar may approve or refuse to approve amalgamation.

- (a) approve;
- (b) approve subject to compliance with such terms and conditions as he deems fit; or
- (c) refuse to approve,

a proposal for amalgamation of which he is advised under subsection (3).

Registrar to communicate decision.

(5) After the Registrar reaches a decision under subsection (4) he shall communicate that decision to each of the registered societies which propose an amalgamation.

Registration of amalgamated society.

(6) After the registered societies which propose to amalgamate receive the decision of the Registrar they shall, if he has not refused to approve the proposal for amalgamation and if they wish to proceed with the amalgamation, provide the Registrar, if they have not already done so, with

- (a) a certified copy of the resolution of each of the amalgamating societies passed and confirmed in accordance with subsection (2);
- (b) a copy of the proposed constitution of the amalgamated society; and
- (c) proof that the terms and conditions, if any, laid down by the Registrar under paragraph (b) of subsection (4) have been complied with

and the Registrar may, if he thinks fit, register the amalgamated society and its constitution in accordance with Section 10.

Effective date and effects of registration.

(7) On and from the date of the registration of an amalgamated society

- (a) the amalgamating registered societies are amalgamated and continued as one registered society by the name specified in the certificate of registration; and
- (b) the amalgamated registered society possesses all the property, rights, privileges and franchises and is subject to all the contracts, liabilities and debts of each of the amalgamating registered societies.

Publication of notice of amalgamation.

(8) A notice to the effect that the amalgamating registered societies have been amalgamated and that this Act has been complied with shall be published in *The Newfoundland Gazette*

and in one issue of a newspaper published or circulating in the place where the registered address of the amalgamated registered society is situated.

#### CANCELLING OF REGISTRY.

**54.**—(1) The Registrar may with the previous approval of the Minister cancel the registry of a society by writing under his hand

Cancelling of registry.

- (a) if at any time it is proved to his satisfaction that the number of members of the society has been reduced below five, or that the society has ceased to exist;
- (b) on proof to his satisfaction that the registration of the society has been obtained by fraud or misrepresentation or the society has wilfully, and after notice from the Registrar, violated any of the provisions of this Act, or of the Rules or of its constitution.

(2) Not less than two months' previous notice in writing briefly stating the ground of any intended cancellation of registry shall be given by the Registrar to a society before the same shall be cancelled, and notice of cancellation shall be published in *The Newfoundland Gazette* and in some local newspaper circulating in or about the locality in which the registered office of the society is situated, as soon as practicable after the same takes place.

#### WINDING UP OF SOCIETIES.

**55.**—(1) A society which has been registered under this Act may be wound up

Winding up of societies.

- (a) by an order of the Supreme Court made upon the petition of the society or of any one or more creditor or creditors, contributory or contributories of the society, or by all or any of the above parties together or separately; and the proceedings upon such a petition shall be the same as upon a like petition under The Companies Act;
- (b) by an order of the Minister following upon a cancellation of registry;

- (c) by a resolution for the winding up thereof passed by a majority of not less than three-fourths of such members of the society for the time being entitled according to the regulations of the society to vote as may be present in person or by proxy in cases where by the constitution of the society proxies are allowed at any general meeting of which notice specifying the intention and purposes of such resolution has been duly given, and which resolution has been confirmed by a majority of such members for the time being entitled according to the constitution of the society to vote as may be present in person or by proxy at a subsequent general meeting of which notice has been duly given and held at an interval of not less than seven days nor more than one month from the date of the meeting at which such resolution was first passed;
- (d) by the consent of three-fourths of the members testified by their signatures to an instrument of dissolution.

(2) Notice of any meeting shall for the purposes of this section be deemed to be duly given and the meeting to be duly held whenever such notice is given and meeting held in the manner prescribed by the regulations of the society.

Instrument of  
dissolution.

**56.** Where a society is terminated by an instrument of dissolution

- (a) the instrument of dissolution shall set forth the liabilities and assets of the society in detail, the number of members and the nature of their interests in the society and the claims of creditors, if any;
- (b) the signatures to the instrument of dissolution shall be witnessed by a credible witness or witnesses who shall prove the same on oath before a justice of the peace;
- (c) a statutory declaration shall be made by three members and the secretary of the society that the provisions of the Act, Rules and constitution of the society have been complied with and that the facts set forth in the instru-

ment of dissolution are true and shall be filed with the Registrar with the instrument of dissolution;

- (d) any person making a false or fraudulent declaration in any matter relating to an instrument of dissolution shall be guilty of an offence against this Act.

**57.**—(1) When a society has been ordered to be wound up or has passed a special resolution for winding up or an instrument of dissolution has been executed in respect thereof, the Registrar, or the court, if the winding up be upon an order of the court, may appoint a competent person to be liquidator of the society.

Appointment  
of liquidator.

(2) A liquidator appointed under subsection (1) shall have power

- (a) to institute and defend suits and other legal proceedings by and on behalf of the society by his name of office and to appear in any court as a litigant in person on behalf of the society;
- (b) to refer disputes to arbitration;
- (c) to determine the contribution to be paid by the members and past members and by the estates of deceased members of the society respectively to the assets of the society;
- (d) to investigate all claims against the society and subject to the provisions of this Act to decide questions of priority arising between claimants;
- (e) to determine from time to time by what persons and in what proportion the costs of their liquidation are to be borne;
- (f) to take possession of the books, documents and assets of the society;
- (g) to collect and distribute the assets of the society and to dispose of the books and documents of the society as

may appear to him to be necessary for winding up the affairs of the society;

- (h) to carry on the business of the society so far as may be necessary for the winding up of the affairs of the society;
- (i) with the approval of the Registrar, given generally or from time to time, to incur obligations, borrow money and give security on any property of the society by mortgage, charge, assignment, pledge or otherwise; and
- (j) to exercise all of the powers of the committee so far as is necessary for the winding up of the society,

and upon the appointment of the liquidator the committee shall cease to hold office.

Liability of  
members in  
winding up.

**58.** Where a registered society is wound up, in pursuance of an order or resolution, the liability of a present or past member of the society to contribute for payment of the debts and liabilities of the society, the expenses of winding up, and the adjustment of the rights of contributories amongst themselves, shall be qualified as follows:

- (a) No member who or which has ceased to be a member for one year or upwards prior to the commencement of the winding up shall be liable to contribute.
- (b) No member shall be liable to contribute in respect of any debt or liability contracted after he or it ceased to be a member.
- (c) No member who or which has ceased to be a member shall be liable to contribute unless it appears to the liquidator that the contributions of the existing members are insufficient to satisfy the just demands on the society.
- (d) No contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he or it is liable as a past or present member.

- (e) A member shall be taken to have ceased to be a member, in respect of any withdrawable share withdrawn, from the date of the notice of application for withdrawal.

**59.** When the liquidator has completed the winding up he shall call a meeting of the society and submit his accounts to the meeting and thereafter he shall file with the Registrar a copy of his accounts, together with copies of all resolutions passed at the meeting of the society at which the accounts were submitted; the whole being authenticated by a statutory declaration in the prescribed form; and the Registrar may either

Accounts of liquidator; meeting; dissolution of society.

- (a) if he be not satisfied that the winding up has been properly carried out, remit the matter back to the liquidator with directions for further action; or
- (b) when he is satisfied that the winding up has been properly carried out, cancel the registration of the society; whereupon the society shall be dissolved.

#### WINDING UP UNDER SUPERVISION.

**60.** When an order of the court or of the Minister has been made for the winding up of a society or when a resolution has been passed by a society for winding up or where an instrument of dissolution of a society has been filed with the Registrar, the Supreme Court may upon the petition of the Registrar or of a liquidator or of any contributory or creditor of the society, make an order directing that the winding up shall continue but subject to such supervision of the court and with such liberty for creditors, contributories or others to apply to the court and generally upon such terms and conditions as the court thinks fit.

Application to court for supervision.

**61.** The court may in determining whether the society is to be wound up subject to the supervision of the court have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence and may direct meetings of the creditors or contributories to be summoned, held and regulated in such manner as the court directs for the purpose of ascertaining their wishes and may appoint a person to act as chairman of any such meeting and to report the result of any such meeting

Court to have regard to wishes of persons interested.

to the court. In the case of creditors regard shall be had to the value of the debts due to each creditor; and in the case of contributories to the number of votes conferred on each contributory by the regulations of the society or to the extent of the interest of each contributory in the funds of the society.

Additional liquidators.

**62.** When an order is made by the court for a winding up subject to the supervision of the court the court may in such order or in any subsequent order appoint an additional liquidator or liquidators; and any liquidators appointed by the court shall have the same powers and be subject to the same obligations and in all respects stand in the same position as if they had been appointed by the Registrar. The court may from time to time remove any liquidators so appointed by the court and fill up any vacancies occasioned by such removal or by death or resignation.

Powers of liquidators.

**63.** Where an order is made for a winding up subject to the supervision of the court the liquidators appointed to conduct such winding up may, subject to any restrictions imposed by the court, exercise all their powers without the sanction or intervention of the court in the same manner as if the society were being wound up without supervision.

Staying of actions.

**64.—(1)** A court may at any time after the presentation of a petition for the winding up of a society under this Act and before making an order for the winding up of the society, upon the application of the society or of any creditor or contributory of the society, restrain further proceedings in any action or proceeding against the society upon such terms as the court thinks fit.

(2) When an order has been made for winding up a society under the supervision of the court no action or other proceedings shall be proceeded with or commenced against the society except with leave of the court and subject to such terms as the court may impose.

(3) When a society is being wound up otherwise than under the supervision of the court, the court may upon the application of the society or of any creditor or contributory of the society

restrain proceedings in any action or proceeding against the society upon such terms as the court thinks fit.

**65.**—(1) Subject to any order of the court, when a society is being wound up and

Disposition  
of surplus on  
winding up.

- (a) all debts payable by the society; and
- (b) all expenses of or incidental to the winding up and the realization of the assets of the society,

are paid and there is any balance remaining, the society may, at the final meeting of the society called by the liquidator or liquidators, by a resolution passed by a majority present at the meeting grant such balance to

- (c) a fraternal or religious body or community association operating within the area served by the society and approved by the society for the purpose; or
- (d) such organization as may be designated by the Registrar.

(2) If there is not a quorum at the final meeting referred to in subsection (1) or if the meeting is unable to decide upon the disposition of the balance referred to in that subsection, the balance shall be paid by the liquidator or liquidators to such organization as may be designated by the Registrar.

#### FEEs.

**66.**—(1) The Minister may determine a scale of fees to be paid for matters to be transacted under this Act and for audit by or on behalf of the Registrar and for the inspection of documents filed with the Registrar under this Act.

Fees.

(2) All fees received by the Registrar under or by virtue of this Act shall be paid into the Consolidated Revenue Fund.

## RULES.

Rules.

**67.**—(1) The Minister may, for any registered society or class of such societies, or for all societies, make Rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such Rules may

- (a) subject to the provisions of Section 6 prescribe the maximum number of shares or portion of the capital of a society which may be held by a member;
- (b) prescribe the forms to be used and the conditions to be complied with in the making of applications for the registration of a society and the procedure in the matter of such applications;
- (c) prescribe in whole or in part the forms of constitutions of societies;
- (d) regulate the manner in which funds may be raised by means of shares or debentures or otherwise;
- (e) prescribe the accounts and books to be kept by a society and provide for the audit of such accounts and books and for the periodical publication of a balance sheet showing the assets and liabilities of a society;
- (f) prescribe the returns to be submitted by a society to the Registrar and provide for the persons by whom and the form in which such returns shall be submitted;
- (g) provide for the persons by whom and the form in which copies of entries in books of societies may be certified;
- (h) provide for the mode in which the value of a deceased member's interest shall be ascertained and for the nomination of a person to whom such interest may be paid or transferred;

- (i) provide for the mode in which the value of the interest of a member who has become of unsound mind and incapable of managing himself or his affairs shall be ascertained and for the nomination of any person to whom such interest may be paid or transferred;
- (j) prescribe the conditions under which a registered society may make loans, the conditions to be complied with by members applying for loans, the period for which loans may be made, the amount which may be loaned to an individual member and the manner in which loans shall be repaid;
- (k) provide for the formation and maintenance of reserve funds, and the objects to which such funds may be applied and for the investment of any funds under the control of the society;
- (l) prescribe the extent to which a society may limit the number of its members;
- (m) prescribe what shall be an acceptable written designation, for the purposes of this Act, under Section 3;
- (n) prescribe the conditions under which the net operating surplus of a year and other accumulated funds may be distributed to the members of a society with limited liability and the maximum rate of dividend on share capital which may be paid by societies;
- (o) prohibit or restrict the transfer of shares;
- (p) prohibit or restrict the withdrawal of shares;
- (q) prescribe the conditions under and the extent to which a society may prohibit or restrict the transfer of shares;
- (r) prescribe the conditions under and the extent to which a society may prohibit or restrict the withdrawal of shares;

- (s) prohibit or regulate the granting of loans or any other advantages by a registered society to officers of such society;
- (t) prescribe the procedure to be followed and conditions under which any registered society may alter the name under which it has been registered;
- (u) prescribe the procedure by which and conditions under which any company or society which has been registered under The Companies Act for the time being in force or The Industrial and Provident Societies Act, or The Agricultural Societies Act, may be registered under this Act: Provided that no such company or society shall be registered unless governed by rules and regulations to be registered as provided by this Act and which are not contrary to this Act or to the Rules.

Registrar may prescribe accounts and books for society and require returns.

**68.** The Registrar shall have power to prescribe in addition to or instead of the requirements in respect of these matters, if any, under the Rules

- (a) the accounts and books to be kept by a specific society;
- (b) the returns to be submitted by a specific society to the Registrar and the persons by whom and the form in which such returns shall be submitted.

#### OFFENCES.

Offences.

**69.—(1)** It shall be an offence under this Act if

- (a) a society or an officer or a member thereof wilfully neglects or refuses to do any act or to furnish any information required for the purposes of this Act by the Registrar or other person duly authorized by him in writing in this behalf; or
- (b) a society or an officer or a member thereof wilfully makes a false return or furnishes false information; or

- (c) any person wilfully or without any reasonable excuse disobeys any summons, requisition or lawful written order issued under the provisions of this Act or does not furnish any information lawfully required from him by a person authorized to do so under the provisions of this Act.

(2) Every society, officer or member of a society or other person guilty of an offence under this section shall be liable upon summary conviction to a fine not exceeding one hundred dollars.

**70.**—(1) No person other than a registered society shall trade or carry on business under any name or title of which the word “co-operative” or any abbreviation thereof is part without the sanction of the Minister.

Prohibition of the use of the word “co-operative”; penalty.

(2) Whoever contravenes the provisions of this section shall be liable upon summary conviction to a fine not exceeding fifty dollars, and in the case of a continuing offence to a further fine not exceeding ten dollars for each day on which the offence is continued after conviction therefor.

**71.**—(1) A company or society registered under The Companies Act for the time being in force or The Industrial and Provident Societies Act, may, by a special resolution passed in accordance with the provisions of the Acts or Act under which it is registreed, determine to convert itself into a society for registration under this Act, and, for this purpose, in any case where the nominal value of its shares held by any member other than a registered society exceeds the portion of the share capital of a society permitted by Section 6 of this Act, may, with the consent of such member, by such resolution provide for the conversion of the excess of such share capital over the said portion into a loan from such member to the proposed society bearing such rate of interest as may by such resolution be fixed and repayable on such conditions only as are in such resolution determined.

Companies and societies may register under this Act.

(2) A society registered under The Agricultural Societies Act, may, in the manner following, determine to convert itself into a society for registration under this Act, that is to say, by a resolution passed by a majority of not less than three-fourths of such

members of the society for the time being entitled, according to the rules, regulations or bye-laws of the society to vote, as may be present in person or by proxy, in the case where by the rules regulations or bye-laws proxies are allowed, at any general meeting of which notice specifying the intention to propose such resolution has been duly given.

(3) Any company or society registered under The Companies Act for the time being in force or The Industrial and Provident Societies Act, or The Agricultural Societies Act, which has determined to convert itself into a society for registration under this Act, may, in accordance with the procedure and conditions, prescribed by rules made by the Minister under Section 67 of this Act, be registered under this Act; and, upon registration of any such company or society under this Act, the certificate issued by the Registrar together with a copy of the resolution for the conversion of such company or society into a society registered under this Act shall be sent for registration to the office of the Registrar of Companies in the case of a company or society registered under The Companies Act or the Industrial and Provident Societies Act, or to the office of the Minister in the case of a society registered under The Agricultural Societies Act; and upon registration of such resolution and certificate by the Registrar of Companies or the Minister as the case may be, the registry of such company or society shall become void and shall be cancelled by the Registrar of Companies or the Minister who shall notify such company or society and the Registrar accordingly: Provided that registration of any such company or society as a registered society under this Act shall not affect any right or claim for the time being subsisting against or any penalty for the time being incurred by such company or society; and, for the purpose of enforcing any such right, claim or penalty, the company or society may be sued and proceeded against in the same manner as if it had not become a registered society under this Act; and every such right or claim and the liability to such penalty shall have priority, as against the property of such company or society, over all other rights or claims against or liabilities of such company or society.

Establishment  
of Newfoundland  
Co-operative  
Services.

**72.**—(1) Where an application is made to him in that behalf  
by

- (a) not less than five registered societies; or
- (b) not less than five registered societies and any number of organizations operating in Newfoundland which are not registered societies but in respect of which the Registrar has certified that they have as their object the promotion of the economic interests of their members and are operating in accordance with co-operative principles

the Lieutenant-Governor in Council may, by order, establish the applicants as a corporation by the name of The Newfoundland Co-operative Services.

(2) Not more than one Corporation shall be established by an order made under subsection (1) and when the Corporation is established it shall be registered by the Registrar under its corporate name.

Only one corporation to be established.

(3) Subject to this section and any regulations made thereunder, new members shall from time to time be admitted to membership in the Corporation referred to in subsection (1).

New members in corporation.

(4) Subject to this section the Lieutenant-Governor in Council may, when establishing the Corporation referred to in subsection (1) or thereafter from time to time, make regulations

Regulations.

- (a) respecting the qualifications for membership in the Corporation and the rights, duties and powers of members and providing for admission to membership of persons, societies, associations, corporations and organizations in addition to registered societies;
- (b) governing the holding of and procedure at meetings of the Corporation;
- (c) granting and defining the objects, powers, duties and functions of the Corporation;
- (d) without limiting the generality of this subsection, granting to or imposing upon the Corporation any of the rights, duties and liabilities granted to or imposed upon

a registered society by or under this Act, and applying to the Corporation as many of the provisions of this Act as he deems necessary or desirable;

- (e) governing the dissolution of the Corporation; and
- (f) respecting all such other matters and things as are incidental or conducive to or consequential upon the attainment of the objects of the Corporation or are in the opinion of the Lieutenant-Governor in Council necessary or desirable.

**Application.**

(5) Subject to this section, none of the provisions of this Act other than this section apply to the Corporation.



## CHAPTER 66

### An Act to Constitute a Corporation to Deal with Housing and Urban Renewal in Corner Brook

- 1.** This Act may be cited as The Corner Brook Housing Corporation Act. Short title.
- 2.** In this Act Interpretation.
- (a) "Corner Brook" means the City of Corner Brook, and such parts if any, of the territory adjacent to it as the Lieutenant-Governor in Council may from time to time by Proclamation direct to be deemed part of the City for the purposes of this Act;
- (b) "Corporation" means the Corner Brook Housing Corporation created by this Act; and
- (c) "Minister" means the Minister of Municipal Affairs.
- 3.** The Lieutenant-Governor in Council may by Order constitute a corporation, to consist of such persons as he may in the first instance appoint or thereafter add to it, which shall be known as The Corner Brook Housing Corporation; and he shall designate a member to be Chairman and another to be Vice-Chairman. The Corporation, Chairman and Vice-Chairman.
- 4.** The Corporation shall have perpetual succession and a Common Seal; and shall be capable of suing and being sued, pleading and being impleaded, in all courts and places. Incorporation, and Seal.
- 5.** Every member of the Corporation shall hold office during pleasure, and the Lieutenant-Governor in Council may from time to time determine the number of members, not being less Tenure of office of members.

than seven nor more than nine, and may make appointments to fill any vacancies occurring in the membership of the Corporation.

Procedure,  
and custody  
of Seal.

**6.** The Corporation may determine its own procedure, and make rules for the custody and use of its Seal.

Members,  
position of.

**7.** The members of the Corporation shall serve without remuneration, or with such remuneration as the Lieutenant-Governor in Council may from time to time appoint.

Majority  
and quorum.

**8.** The Corporation shall act by a majority of those present at any meeting, and shall not be disabled from any action by any vacancy in its membership, provided that the membership shall not have fallen below five. A quorum at a meeting shall be three members personally present.

Staff.

**9.** The Corporation may appoint and engage such secretaries, clerks, accountants, engineers, surveyors, architects or other staff of any kind as it may deem necessary for the conduct of its business, subject to the approval of the Minister.

Auditing  
of accounts.

**10.** The Auditor General shall have power from time to time to examine and audit the books of account of the Corporation, and for such purpose the Corporation, their clerks and servants shall produce to him all such books, accounts, vouchers, correspondence and other documents, and furnish all such information, as he shall require for the purpose of such audit. The Auditor General shall make a report to the Lieutenant-Governor in Council upon the said accounts up to the close of the next preceding year.

Annual  
reports.

**11.—(1)** At the end of every year the Corporation shall make a report on its operations and furnish signed copies of the report together with its accounts to the Minister.

Annual reports  
to be tabled.

**(2)** A copy of every report furnished to the Minister pursuant to subsection (1) shall be laid before the Legislature within fifteen days after it is received by the Minister, if the Legislature is then in session, and if it is not, then within fifteen days after the commencement of the next ensuing session.

**12.** The books and accounts of the Corporation shall be subject to the inspection of the Lieutenant-Governor in Council at all times when requested.

Inspection  
of books.

**13.** The Lieutenant-Governor in Council may at any time cause an enquiry to be made into the affairs of the Corporation and a report to be made thereon. The Corporation and its officers shall produce before any person or board appointed to hold such enquiry all books and documents required from them and shall appear and give evidence upon oath if required of them whenever called upon so to do by such person or board.

Enquiry by  
Government.

**14.** The members of the Corporation shall not be subject to personal liability for anything done in good faith in pursuance of the duties and powers of the Corporation.

Indemnity  
of members.

**15.** The powers and duties of the Corporation shall be

Powers and  
duties of  
Corporation.

- (a) to enquire into the position and needs of Corner Brook in respect of housing;
- (b) to enquire into the position and needs of Corner Brook in respect of urban renewal, replanning, slum clearance and any or all matters commonly referred to under the general phrase "urban renewal";
- (c) to devise plans and schemes for meeting the said needs and to report on the same to the Minister;
- (d) to plan and negotiate schemes for the financing of housing and urban renewal schemes;
- (e) to buy, sell, lease, mortgage or otherwise deal with or dispose of any land or property, or to cause or procure lands or property to be expropriated if necessary in any lawful manner for the purpose of the Corporation;
- (f) to make or procure the making of roads, streets, bridges, viaducts, sewers, water lines, pavements, gutters, drains, parks, playgrounds, open spaces and the like and to plant trees, shrubs or grass, and generally to do all such things as may be deemed necessary or expedient for the

better housing of the people and the improvement of their environment;

- (g) to receive gifts or grants of land, buildings, money or money's worth from any source for the purpose of the Corporation or in trust for specific purposes;
- (h) to lend or advance moneys with or without security for the purchase, construction or improvement of buildings of any kind;
- (i) to receive or raise loans from governmental, municipal or other bodies, public or private, or from persons, and to pay interest thereon and to establish sinking funds and to repay loans; and
- (j) to borrow money from time to time on the security of any or all of the property of the Corporation or otherwise.

Corporation  
to be Housing  
Authority.

**16.** The Corporation shall be deemed to be the Housing Authority for Corner Brook for the purposes of The Housing Act, and any acts in amendment thereof or in substitution therefor, and for the purposes of The Expropriation Act.



## CHAPTER 67

### An Act Respecting the Correction and the Prevention of Delinquency

WHEREAS it is desirable that, for the ultimate protection of society, a juvenile adjudged to have committed a delinquency and a person adjudged to have committed an offence be examined with a view to determining as accurately as may be the cause or causes of the delinquency or offence, and that so far as practicable every delinquent or offender be given such help, guidance, retraining, and treatment, whether within or outside a correctional institution, as may appear most likely to remedy or correct the condition believed to underlie his delinquency or offence.

#### SHORT TITLE.

1. This Act may be cited as The Corrections Act.

Short title.

#### INTERPRETATION.

2. In this Act

Interpretation.

- (a) "assistant director" means the Assistant Director of Corrections;
- (b) "committal order" includes any order made by lawful authority for the detention of a person in a correctional institution;
- (c) "correctional institution" includes every gaol, the Penitentiary referred to in The Prisons Act, any other penitentiary and any other place approved by the Lieutenant-Governor in Council for the study, confinement and correction of persons committed thereto;
- (d) "department" means the Department of Social Services and Rehabilitation;

- (e) "director" means the Director of Corrections;
- (f) "division" means the Division of Corrections of the department;
- (g) "Minister" means the Minister of Social Services and Rehabilitation;
- (h) "parent" includes a guardian and every person who is liable by law to maintain a child;
- (i) "peace officer" includes any superintendent or other employee of a correctional institution, any officer or member of the Newfoundland Constabulary or of the Royal Canadian Mounted Police;
- (j) "superintendent" means the chief executive officer of a correctional institution.

### PART I.

#### ADMINISTRATION.

Correction  
division.

**3.** There shall be a division within the department which shall be called the Division of Corrections over which the director will preside.

Director and  
Assistant  
Director of  
Corrections.

**4.** The Lieutenant-Governor in Council may appoint a Director of Corrections and an Assistant Director of Corrections to administer the affairs of the division.

Staff.

**5.** Such other officers, clerks, and employees as are necessary for the proper conduct of the business of the division shall be appointed or employed in the manner authorized by law.

### PART II.

#### ADULT OFFENDERS.

#### INTERPRETATION.

Interpretation.

**6.** In this Part

- (a) "authority" means the Adult Guidance Authority constituted under this Part;

- (b) "judge" includes a judge, a magistrate, a justice of the peace or other person having authority to commit a person to a correctional institution;
- (c) "offence" includes the breach or contravention of any law of Canada or Newfoundland when such breach or contravention may result in prosecution in a court of law;
- (d) "probation officer" means an adult probation officer appointed or designated under this Part.

#### ADULT GUIDANCE AUTHORITY.

**7.—**(1) The Lieutenant-Governor in Council shall appoint an Adult Guidance Authority for the province consisting of the director, the assistant director, the superintendent of an adult correctional institution or his representative, a psychiatrist registered under The Newfoundland Medical Board Act and one other person.

Adult  
Guidance  
Authority.

(2) The authority shall, in addition to the duties hereinafter prescribed, perform such other duties consistent with this Act as may from time to time be designated by the Minister.

Duties.

(3) The director shall be chairman of the authority and, in his absence, the assistant director shall be the chairman.

Chairman.

(4) A majority of the members of the authority shall constitute a quorum for the transaction of business and the majority opinion of the members present shall constitute a binding decision.

Quorum.

#### PROBATION OFFICERS.

**8.—**(1) The Minister may designate members of the staff of the department to perform the work of probation officers.

Probation  
officers.

(2) Every probation officer has the powers of a peace officer in the performance of his duties under this Part.

Powers of  
probation  
officers.

**9.** The director or his representative may with the consent of the person concerned conduct an examination into any per-

Examination  
of accused  
persons.

minent matters respecting any person charged with an offence and conduct such examination of a person convicted of an offence without his consent.

Purpose of examination.

**10.** Notwithstanding anything in this Part no investigation shall be conducted by the director or his representative for the specific purpose of determining the guilt or the innocence of the subject and the only purpose of the investigation shall be to assess his personal qualities and any other resources for guidance of the appropriate authorities in determining what treatment will be most effective for the subject's well-being and for the good of the community.

Request by judge for examination of offender.

**11.—(1)** A judge may in writing request the director or a probation officer whom the judge may designate in his place to conduct an investigation, subject to Section 10, and to submit a report thereon concerning any person who having been charged with an offence is required to appear before the judge.

Investigation and report.

(2) Upon receiving such request the director shall conduct the investigation and submit to the judge a written report based thereon.

Report to be filed as exhibit.

**12.** Where a report is submitted under Section 11 the judge shall enter the report as an exhibit, with the consent of the accused.

Right to interpret report.

**13.** Where a report is entered as an exhibit under Section 12, the judge shall provide an opportunity for the director or the probation officer to make such statement during the hearing or trial as may serve to clarify, interpret or otherwise elucidate the meaning and intention of his report.

Classification report before trial.

**14.—(1)** A judge may require a classification report concerning any accused person whom the judge has remanded to a correctional institution designated by the Minister for the purpose.

Report by Minister.

(2) Before the expiration of the period of remand the Minister shall make or cause to be made a report in writing to the judge describing any pertinent findings together with explanations or recommendations which appear to be relevant.

**15.** The Attorney General or any person designated by him for the purpose has authority to designate the institution or other place of correction to which an adult sentenced to imprisonment for less than two years shall be committed.

Minister to designate institution.

**16.—(1)** In order to provide for adequate segregation and appropriate treatment the Attorney General may order that any person charged with an offence and confined in a correctional institution or who has been sentenced to serve a term of imprisonment in a correctional institution be removed to any other correctional institution named in the order, for safe confinement and treatment there to be kept until discharge in due course of law or removed for the purpose of trial.

Transfer of inmates by order of Minister.

(2) A copy of such order shall be sufficient authority to superintendents, sheriffs, deputy sheriffs, peace officers, and to keepers or gaolers, respectively, to act in conformity therewith and to deliver over and to receive the person named therein, and it shall be accompanied by the documents authorizing his detention in the institution from which he is being transferred.

Authority of order.

**17.** Notwithstanding Section 16, the Attorney General may designate the classification of adult offenders for which each correctional institution shall be used and in such case each institution shall as soon as practicable be used only for the type of offenders so designated with respect thereto.

Specific use of institutions.

**18.** For the purpose of giving effect to Section 663 of the *Criminal Code* and amendments thereto, the director or any probation officer designated by him has power to exercise supervision over and to provide guidance and other help for any person whom the court has placed on suspended sentence under his care.

Power to supervise probationers.

**19.** If as the result of his investigation before trial a probation officer recommends to the court that the accused, if found guilty, be placed on probation, the probation officer shall receive on probation and shall supervise the said subject if the court grants a suspended sentence in keeping with the recommendation and places the subject under the probation officer's supervision.

Probation service.

Parole  
service.

**20.** In case the parole of a person from an adult correctional institution is granted upon the recommendation of the authority, the director is responsible for that person's supervision during parole.

#### CORRECTIONAL INSTITUTIONS.

Institutions  
continued as  
places of  
lawful  
detention.

**21.** Until otherwise provided by competent authority, the buildings and premises now in use or hereafter proclaimed by the Lieutenant-Governor in Council to be correctional institutions in Newfoundland shall be lawful places for the confinement and treatment of persons being detained for trial or under sentence.

Duties of  
superintendent.

**22.** A superintendent and such other officers, clerks and employees as are necessary for the proper conduct of the business of each correctional institution shall be appointed or employed in the manner authorized by law.

Superinten-  
dent.

**23.** The superintendent is the chief executive officer of the institution and in consultation with the director shall

- (a) direct and co-ordinate the programme of the institution;
- (b) control the internal management and administration of the institution as they relate to physical operation, matters of discipline and the treatment of persons confined therein.

Classification  
centre.

**24.** There shall be one or more classification centres, each to be known as the Newfoundland Classification Centre.

Classification  
team.

**25.—(1)** The Lieutenant-Governor in Council may appoint the personnel of each classification centre which shall include a social case worker, a psychologist, an educationalist and a psychiatrist or doctor, and they shall be known as the classification team.

Idem.

(2) If any member of the classification team has status in more than one of the required professions, every such profession may be considered represented but there shall be at least three professional persons on the team.

## OPERATION OF INSTITUTIONS.

**26.** The Minister may at his discretion provide an allowance for any person committed to any correctional institution and upon his release may provide him with transportation to his home or the home of his parents or guardian, a suitable outfit of clothing and a sum of money to assist him in becoming re-established in the community.

Assistance  
to inmates.

**27.** Every person who is sentenced or otherwise lawfully committed to any correctional institution operated under this Act shall be subject to the provisions of the statutes relating to such institution and to all regulations lawfully made with respect thereto.

Inmates  
subject to  
regulations.

**28.** Confinement in any provincial correctional institution may include such treatment as is considered appropriate for the rehabilitation of the individual.

Treatment.

**29.** In order to encourage desirable behaviour and conscientious effort among inmates of correctional institutions and with a view to permitting each inmate to earn a remission of a portion of the term for which he was committed, the Lieutenant-Governor in Council may require superintendents of such correctional institutions as he may specify from time to time to keep a correct record of the daily conduct of each inmate thereof, noting his behaviour, his work record within the institution, any significant change in attitude and conduct, and such other data as may be required by any Act of the Parliament of Canada or regulations thereunder permitting an institution to receive persons having indeterminate sentences.

Daily record  
of inmates.

## VOLUNTARY SUBJECTS.

**30.** The authority may authorize admission into any correctional institution having a classification centre of any person who is considered by the authority to be a subject suitable for examination and guidance and who voluntarily makes written application therefor through the director to the authority and the application shall be on a prescribed form and shall be attested by a judge, a magistrate, the chief of police, the senior officer of the Royal Canadian Mounted Police in Newfoundland,

Voluntary  
application  
for examina-  
tion at centre.

a duly qualified medical practitioner, psychologist, clergyman or the chief executive of a recognized social welfare agency.

Period of detention.

**31.**—(1) A person received under Section 30 shall not be detained more than three days after having given to the superintendent of the institution a notice in writing of his desire to leave the institution.

Subject to rules, etc.

(2) A person so received shall be subject to the discipline, rules, and regulations governing persons committed to the institution.

Discharge.

(3) The superintendent with the consent of the authority may discharge such person from the institution twenty-four hours after giving him written notice of intention to do so.

Prohibitions.

**32.** No person shall be admitted as a voluntary subject to a correctional institution who is

(a) under warrant of arrest; or

(b) considered by the authority to be seeking such admission solely for maintenance and asylum.

### PART III.

#### GENERAL.

Advisory board.

**33.**—(1) The Minister may appoint a board of advisors not exceeding five in number to be known as the Advisory Board of Corrections who shall confer with and advise the director concerning matters of policy and administration.

Term of office.

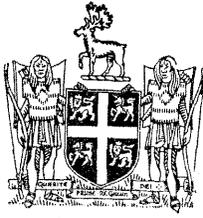
(2) Members of the board shall hold office at the Minister's pleasure and shall serve without remuneration.

Payment by voluntary subjects.

**34.** Where a person is admitted to a correctional institution upon voluntary application, the Minister may require payment by such person or by a person responsible for him, in respect of the services rendered, but no payment shall be required where in the opinion of the Minister the payment would constitute a hardship.

- 35.** The Minister may undertake and promote a programme for prevention of crime and delinquency and may foster programmes initiated under other auspices as an integral part of the duties of the division. Preventive programme.
- 36.** Every officer and employee working under the authority of the division or of this Act, regardless of the classification of his employment, has power to exercise custodial authority over and shall be a lawful guardian of persons committed to the custody of officers or to institutions authorized by this Act. Employees' custodial powers.
- 37.**—(1) In order to meet emergent needs of correctional institutions arising from circumstances peculiar thereto, any employee of a correctional institution may perform work of a technical or skilled nature in connection with such institution if he is competent to do so by reason of training and experience notwithstanding any lack of documentary or other credentials required in the case of other persons performing such work. Technical work permitted.
- (2) All work performed under subsection (1) shall be inspected by a qualified inspector who shall ensure that quality standards required by statute or regulation are satisfied. Inspection of work.
- 38.** Where any provision of any other Act of the Legislature is inconsistent with any of the provisions of this Act the provisions of this Act prevail. Prevalence of Act.
- 39.** The Lieutenant-Governor in Council may make such rules and regulations as he may deem advisable for carrying into effect the provisions of this Act according to their true intent and for supplying any deficiency therein. Regulations.





## CHAPTER 68

### An Act to Provide for the Payment of Compensation in Respect of Persons Injured or Killed by Certain Criminal Acts or Omissions of Others

1. This Act may be cited as The Criminal Injuries Compensation Act. Short title.

#### INTERPRETATION.

2. In this Act Interpretation.
- (a) "Board" means The Newfoundland Crimes Compensation Board established by this Act;
  - (b) "child" includes a stepchild, an illegitimate child, a child *en ventre sa mere* and a child with respect to whom a victim stands *in loco parentis*;
  - (c) "dependant" means a child or other relative of a deceased victim who was, wholly or partially, dependent upon such victim's income at the time of such victim's death or who would have been so dependent but for the incapacity due to the injury from which the death resulted;
  - (d) "Her Majesty" means Her Majesty in right of Newfoundland;
  - (e) "injury" means actual bodily harm and includes pregnancy and mental or nervous shock;
  - (f) "Minister" means the Minister of Justice;
  - (g) "regulations" means regulations made under this Act; and

(h) "victim" means a person to whom or in respect of whom compensation is or may be payable under this Act.

## ADMINISTRATION.

Minister to administer Act. **3.** The Minister is charged with the administration of this Act.

## ESTABLISHMENT OF BOARD.

Creation of Board. **4.—(1)** There is hereby established a board which shall be known as The Newfoundland Crimes Compensation Board.

Membership of Board. **(2)** The membership of the Board shall consist of three members to be appointed by the Lieutenant-Governor in Council.

Chairman and Vice-Chairman. **(3)** The Lieutenant-Governor in Council may designate one of the members of the Board to be Chairman and another to be Vice-Chairman of the Board.

Quorum. **(4)** Two members of the Board shall constitute a quorum.

When vacancy in Board remaining members may act. **(5)** Notwithstanding subsection (4), if a vacancy occurs in the Board the remaining members of the Board may exercise the powers and carry out the duties of the Board, and any one member of the Board may, with respect to an application for the payment of compensation under this Act, hold an enquiry or conduct a hearing for the Board.

Tenure of office. **(6)** All members of the Board shall hold office during pleasure.

Member of House of Assembly may be member of Board. **5.** Notwithstanding The Legislative Disabilities Act, if a member of the House of Assembly is or becomes a member of the Board, his seat does not become vacant by reason only of his appointment and acceptance of remuneration as a member of the Board, and a member of the Board is not, by reason only of his being a member of the Board and accepting remuneration as a member of the Board, rendered ineligible to be elected or to act or vote as a member of the House of Assembly.

- 6.**—(1) The Chairman shall be the chief executive officer of the Board, and shall be charged with the general direction, supervision and control of the business of the Board and shall have such other powers, duties and functions as may be conferred on him by the regulations. Chairman to be chief executive officer.
- (2) During the incapacity or absence for any reason of the Chairman or a vacancy in the office of Chairman, the Vice-Chairman has and may exercise all of the powers of the Chairman and shall discharge all of his duties. Absence of Chairman.
- (3) All acts done by the Board shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment or qualification of a person purporting to be a member of the Board, be as valid as if that defect had not existed. Acts valid notwithstanding certain defects.
- 7.** The Lieutenant-Governor in Council may authorize the payment of a *per diem* allowance or remuneration and expenses to the members of the Board, and such payment shall be made by the Minister of Finance under the provisions of subsection (2) of Section 43. Remuneration of members of Board.
- 8.** A member of the Board or a person employed by the Board does not become, by reason of such employment only, an officer or servant of Her Majesty. Status of members and employees.
- 9.** The Board, and each member of the Board, has, for the purposes of this Act, all of the powers that are or may be conferred upon a Commissioner appointed under The Public Enquiries Act. Members have powers of Commissioners under The Public Enquiries Act.
- 10.**—(1) The head office of the Board shall be in the City of St. John's in the province. Head office.
- (2) Subject to the approval of the Minister, the Board may establish such other offices and agencies in the province as it deems expedient. Other offices.
- 11.** Subject to the approval of the Minister, the Board may appoint a Secretary to the Board and such investigators, other officers and technical and professional and other employees as may be deemed requisite, and fix their remuneration and terms Appointment of staff.

of service and prescribe the duties and functions thereof, and such persons shall be paid for their services by the Minister of Finance under the provisions of subsections (2) of Section 43.

Provision  
against  
conflict of  
jurisdiction.

**12.** The purpose and intent of this Act is to regulate matters within the competence of the Legislature of the province, and nothing in this Act shall be construed to affect or regulate any matter which is not subject to the legislative authority of the said Legislature.

PAYMENT OF COMPENSATION.

Compensation  
in the event  
of certain  
injuries and  
deaths.

**13.—(1)** Where, after the coming into force of this Act, a person is injured or killed and the injury or death

- (a) is the result of an act or omission of another person that occurred, after the coming into force of this Act, in the province and is within the description of any of the criminal offences set out in the Schedule to this Act;
- (b) resulted to the person while he was, after the coming into force of this Act, arresting or attempting to arrest a person who committed, or was committing or who was suspected of committing or having committed, a criminal offence; or
- (c) resulted to the person while he was, after the coming into force of this Act, rendering assistance to any law enforcement officer in the province who was carrying out his duties with respect to the enforcement of the law,

the Board may, in its absolute discretion, upon receipt of an application in writing, make an order in accordance with this Act for the payment of compensation

- (d) to or for the benefit of the injured person;
- (e) to a person, in respect of pecuniary loss suffered or expenses incurred by that person, as a result of an injury to a victim where the maintenance of the victim is the responsibility of the person; or

(f) to any one or more of the dependants of a victim.

(2) Notwithstanding that a person is for any reason legally incapable of forming a criminal intent, he shall, for the purposes of this Act, be deemed to have intended an act or omission that caused injury or death for which compensation is payable under this Act.

Criminal  
intent  
presumed.

(3) The Lieutenant-Governor in Council may, by order, amend the Schedule to this Act by

Lieutenant-  
Governor  
in Council  
may amend  
Schedule.

(a) adding thereto a description of any criminal offence; or

(b) deleting therefrom the description of any criminal offence set out therein.

**14.** The Board, in making an order under Section 13, shall consider and take into account all such circumstances as it considers relevant to the making of the order and, without limitation of the generality of the foregoing, the Board shall consider and take into account

Considerations  
with respect to  
payment of  
compensation.

(a) any behaviour that directly or indirectly contributed to the injury or death of the victim; and

(b) the financial need of the person who was injured or of the dependants of the victim.

**15.—(1)** The Board shall not make an order for compensation under Section 13

Conditions  
precedent to  
Board's order.

(a) where the application for compensation is made after the expiration of one year from the date of the injury or death, as the case may be;

(b) where the injury or death, as the case may be, and the act or omission or the event resulting in the injury or death are not reported within a reasonable time after the happening thereof to the proper law enforcement authority; or

(c) where the injury or death of a person in respect of

which compensation is claimed resulted from an act or omission of a member of the person's family living with him.

Extension of  
time by Board.

(2) Notwithstanding paragraph (a) of subsection (1), the Board may, where it considers it to be advisable, extend the time for making an application for compensation under Section 13.

Compensation  
for certain  
matters.

**16.** Compensation may be awarded by the Board under this Act in respect of

- (a) expenses actually and reasonably incurred as a result of the victim's injury or death and any other expenses that, in the opinion of the Board, it was necessary to incur;
- (b) pecuniary loss to the victim resulting from the total or partial incapacity of the victim to work;
- (c) pecuniary loss to dependants as a result of the victim's death;
- (d) other pecuniary loss resulting from the victim's injury;  
or
- (e) pain and suffering of the victim,

or in respect of any two or more of such matters.

#### PROCEDURE OF BOARD.

Oath.

**17.** Each member of the Board shall, before entering upon the duties of his office, take and subscribe the following oath of office before any person authorized to administer oaths:

"I, A.B., make oath and say that I will to the best of my ability, and without fear, favour or affection, faithfully perform the duties of a member of The Newfoundland Crimes Compensation Board under The Criminal Injuries Compensation Act while I hold office as such member. So help me God."

**18.** The Board shall, upon receipt of an application for the payment of compensation under this Act, fix a time and place for the hearing of the application and shall cause written notice thereof to be given to the applicant and to any other person that the Board deems to be interested in the proceedings.

Board to fix time for hearings and to give notice.

**19.** Subject to Section 20, the hearing by the Board of an application for the payment of compensation under this Act shall, except where the Board considers that the hearing or part thereof should be held *in camera*, be open to the public.

Hearings to be public.

**20.** All hearings by the Board of an application for the payment of compensation under this Act shall be held *in camera* where

Certain hearings to be private.

- (a) the person whose act or omission caused the injury or death has not been charged with a criminal offence or, if charged, was not convicted of any criminal offence;
- (b) it would not be in the interests of the victim, or of the dependants of the victim, of an alleged sexual offence to hold the hearings in public; or
- (c) it would not be in the interests of public morality to hold the hearings in public.

**21.** Where a person who is entitled to make an application for the payment of compensation under this Act

Application on behalf of persons under disability.

- (a) is an infant, the application shall be made on his behalf by his parent or guardian or by such person as the Board, may direct; or
- (b) is a person of unsound mind, the application shall be made on his behalf by his guardian, or if the person has no guardian, by such person as the Board may direct.

**22.** Any person appearing before the Board in respect of an application for the payment of compensation under this Act may appear and be represented by legal counsel.

Persons may appear by legal counsel.

**23.** Except as otherwise provided in this Act or the regulations, the Board may determine its own procedure.

Procedure of Board.

Evidence.

**24.**—(1) The Board may receive in evidence any statement, document, information or matter that, in his opinion, may assist it to deal effectually with the matter before it whether or not the statement, document, information or matter would be admissible as evidence in any court of law.

Idem.

(2) If a person is convicted of a criminal offence in respect of an act or omission on which a claim under this Act is based, proof of the conviction shall, after the time for an appeal has expired or if an appeal was taken, it was dismissed and no further appeal is available, be taken as conclusive evidence that the offence has been committed.

Board may order costs.

**25.** The Board may, with respect to any hearing, enquiry or other proceeding under this Act, make such order as to costs as it thinks fit.

Compensation not subject to execution, etc.

**26.** Any compensation, or amount awarded as costs, paid or payable under this Act shall not be capable of being assigned, charged, alienated, attached, taken in execution, anticipated or given as security, and any transaction purporting to assign, charge, alienate, attach, take in execution, anticipate or give as security any such compensation or amount is void.

## AMOUNT OF COMPENSATION.

Amount of compensation that may be awarded by the Board.

**27.**—(1) Subject to subsection (2), where the Board makes an order for the payment of compensation it may award such amount as it thinks fit, and compensation so awarded may be in a lump sum or periodical payments during such period as the Board thinks fit, or in both of such ways.

Lieutenant-Governor in Council may fix maximum amount of compensation.

(2) The Lieutenant-Governor in Council may, by order, fix the maximum amount of compensation that may be awarded in respect of any of the matters set out in Section 16.

Certain amounts received to be considered by Board before awarding compensation.

**28.**—(1) Subject to subsections (2) and (3), in determining the amount of compensation, if any, to be awarded to an applicant, the Board shall deduct

- (a) any amount received or to be received by the victim in respect of his injury, or by his dependants in respect of the death of the victim, under or pursuant to any other Act of Canada or of the province or of any other province or territory of Canada; and
- (b) any amount recovered from the person whose act or omission resulted in the injury or death, whether as damages or compensation, pursuant to an action at law or otherwise.

(2) An amount received or to be received under or pursuant to a superannuation plan or program provided under an Act of Canada or of the province or of any other province or territory of Canada shall not be taken into consideration by the Board in determining the amount of compensation to be awarded under this Act.

Amounts not to be considered in awarding compensation.

(3) The Lieutenant-Governor in Council may, by order, designate certain payments or amounts, or certain classes of payments or amounts, received or to be received by a victim or his dependants that shall not be considered by the Board in determining compensation under this Act.

Idem.

**29.** Where the Board makes an order for the payment of compensation under this Act, a copy of the order, duly certified by one of the members of the Board, shall be sent by the Board to the Minister.

Orders for compensation to be sent to Minister of Justice.

**30.** An order for the payment of compensation under this Act may be made subject to such terms and conditions as the Board thinks fit with respect to the payment, disposition, allotment or apportionment of the compensation to or for the benefit of the victim or the dependants or any of them, or as to the holding of the compensation or any part thereof in trust for the victim or the dependants or any of them, whether as a fund for a class or otherwise.

Orders for compensation may be made subject to terms, etc.

**31.—(1)** The Board may at any time, on the application of the Attorney General or the victim or any dependant or the offender, vary an order for payment of compensation made

Power of Board to vary orders.

under this Act in such manner as the Board thinks fit, whether as to terms of the order or by increasing or decreasing the amount ordered to be paid or otherwise.

Idem. (2) In dealing with an application under subsection (1), the Board shall consider

- (a) any new evidence that has become available;
- (b) any change of circumstances that has occurred since the making of the order or any variation thereof, as the case may be, or any change of circumstances that is likely to occur; or
- (c) any other matter the Board considers relevant.

#### RECOVERY OF COMPENSATION.

Recovery of compensation from offender.

**32.**—(1) Where a person is convicted of a criminal offence and an order for the payment of compensation is or has been made under this Act in respect of the injury or death resulting from the act or omission constituting the offence, the Board may, on the application of the Attorney General, require the person to appear before the Board and show cause why an order should not be made directing the person to pay to the Board all or any part of the amount of compensation paid or payable.

Order for recovery of compensation.

(2) The Board may, after giving the convicted person an opportunity to be heard and after considering the financial situation of the person, his family responsibilities and such other factors as the Board considers relevant, make an order directing the person to pay to the Board all or part of the amount of compensation paid or payable in respect of the injury or death resulting from the act or omission constituting the offence for which he was convicted.

Idem.

(3) An order made under subsection (2) may be made subject to such terms and conditions as the Board may prescribe and may be varied by the Board on application made by the Attorney General or the convicted person.

**33.** An order made under subsection (2) of Section 32 may be filed with the Registrar of the Supreme Court of Newfoundland and, when so filed, the order is of the same force and effect and all proceedings may be taken thereon as if it were a judgment of that court for the recovery of a debt against the person named therein.

Order filed and enforced as if it were a court order.

**34.** Where the Board makes an award of compensation under this Act and the person injured or any dependant of the person killed by the act or omission in respect of which the compensation is awarded does not pursue a cause of action against the offender, the Attorney General may, in order to recover all or part of the compensation awarded, bring and maintain any action against the offender that could have been brought by the person injured or by the dependants of the person killed.

Attorney General may bring certain actions.

**35.**—(1) Where compensation is awarded under this Act to a person injured or to a dependant of a person killed, and the person or the dependant receives an amount from the offender pursuant to a judgment delivered in an action brought against the offender causing the injury or death or otherwise, the person or dependant shall refund to the Board

Repayment of certain amounts by victim.

(a) the compensation awarded to him under this Act, if the amount received by the person or dependant is equal to or more than the compensation; or

(b) the amount received, if the amount is less than the compensation paid or payable to him under this Act.

(2) Any compensation or amount required to be refunded under subsection (1) may be recovered by the Attorney General as a debt due to Her Majesty.

Refundable amounts may be recovered by action.

#### APPEAL.

**36.**—(1) Subject to subsection (2), there shall be no appeal from an order or decision of the Board under this Act and the proceedings, orders and decisions of the Board shall not be reviewable by any court of law or by *certiorari*, *mandamus*, prohibition, injunction or other proceeding.

Orders, etc., of Board, other than repayment of compensation, not subject to judicial review.

Appeal by person ordered to pay amount under subsection (2) of Section 32.

(2) A person who is ordered under subsection (2) of Section 32 to pay an amount in respect of compensation may appeal to the Supreme Court of Newfoundland which may make such order with respect to the matter and as to costs as it thinks fit.

Judicature Act and Rules of Supreme Court to apply to appeals.

**37.**—(1) Subject to this Act, The Judicature Act and the Rules of the Supreme Court of Newfoundland, so far as they can be applied and are not inconsistent with this Act, shall apply to every proceeding with respect to appeals referred to in subsection (2) of Section 36 in the same way and to the same extent as they, at the date of the coming into force of this Act, relate to appeals to the Supreme Court of Newfoundland from District Courts under The District Courts Act.

Service of documents on Board.

(2) Any notice or other document required to be served on the Board may be served on the Chairman or Vice-Chairman of the Board.

Notice to persons interested.

(3) The Supreme Court of Newfoundland has power, with respect to appeals referred to in subsection (2) of Section 36, to direct that any person interested, or, where there is a class of persons interested, any one or more persons as representatives of such class, shall be notified of the hearing and such persons are entitled to be heard.

Procedure on appeal.

(4) When an appeal is taken to the Supreme Court of Newfoundland under the provisions of subsection (2) of Section 36, all proceedings shall, unless that court otherwise directs, be taken and the matter shall be determined as if that court were conducting a hearing *de novo* into the matter or thing concerning which the order of the Board appealed from was made.

Time of appeal.

**38.** An appeal to the Supreme Court of Newfoundland under the provisions of subsection (2) of Section 36 shall be made within thirty days from the date of filing of the order appealed from.

#### OFFENCES.

False statement, etc.

**39.** A person who, in any hearing, enquiry or other proceeding under this Act, makes a false statement to the Board or a

member thereof or misleads or attempts to mislead the Board or a member thereof is guilty of an offence and liable on summary conviction to a fine of not less than fifty dollars nor more than five hundred dollars.

**40.** Where a person is convicted of an offence under Section 39 and the Board has made an award of compensation on the basis of the evidence of the convicted person, the Attorney General may recover from the person to whom the compensation was paid all or a portion of such compensation.

Recovery of compensation where order made on the basis of false statement, etc.

REGULATIONS.

**41.—(1)** The Lieutenant-Governor in Council may make such regulations not inconsistent with this Act as he deems necessary or advisable for the more effective carrying out of the purposes of this Act according to its true spirit, intent and meaning and for dealing with any matters for which no express provision has been made or in respect of which only partial or imperfect provision has been made, and, without prejudice to the generality of the foregoing, may make regulations

Regulations.

- (a) prescribing the procedure to be followed in respect of applications to the Board and in respect of any proceedings under this Act, including, but without limitation of the generality of the foregoing, the procedure for the service of notices and documents;
- (b) providing, with respect to any person or persons or class or classes of persons under disability, for service of notices and documents under this Act to be made thereon by service on other persons to be prescribed in such regulations, including, without limitation of the foregoing, guardians and parents, prescribing the duties and responsibilities of such other persons pursuant to such service, providing that any of such other persons who fails to comply with or otherwise contravenes any provision of such regulations prescribing such duties and responsibilities is guilty of an offence, and prescribing penalties to which such other person is liable on summary conviction for such failure or contravention;

- (c) prescribing fees to be paid in respect of applications or proceedings under this Act; and
- (d) respecting any matter, whether of any of the foregoing kinds or not, necessary or advisable, in the opinion of the Lieutenant-Governor in Council, to carry out effectively the intent and purpose of this Act.

Publication  
and date  
of coming  
into force.

(2) Regulations made under subsection (1) shall be published in *The Newfoundland Gazette* and shall have effect from the date of publication or from such later date as may be stated in the regulations and the regulations shall be laid before the Legislature within fifteen days after they are made, if the Legislature is then in session, and, if it is not, then within fifteen days after the commencement of the next ensuing session.

Report by  
Board.

**42.** The Board shall make a report to the Minister annually, on a date to be prescribed by the Minister, concerning the work of the Board during the previous year, and the report shall be laid before the Legislature within fifteen days after it is submitted to the Minister if the Legislature is then sitting, and, if it is not, then within fifteen days after the commencement of the next ensuing session.

#### GENERAL.

Moneys  
received to  
be deposited in  
Consolidated  
Revenue Fund.

**43.—(1)** Any compensation or amount of money recovered, refunded or repaid under this Act shall be deposited in the Consolidated Revenue Fund of the province.

Payments out of  
Consolidated  
Revenue Fund.

(2) The Minister of Finance shall, from moneys voted by the Legislature for the purpose, make payments out of the Consolidated Revenue Fund of the province for the purposes of this Act.

SCHEDULE.

*Section of Criminal  
Code, Revised  
Statutes of  
Canada, 1970,  
Chapter C-34*

OFFENCE.

78	Breach of duty to take reasonable care of explosive substance
79	Intentionally cause injury with explosive substance
144	Rape
145	Attempted rape
200	Abandoning child
201 (a)	Causing bodily harm to apprentice or servant
202	Criminal negligence
203	Causing death by criminal negligence
204	Causing bodily harm by criminal negligence
218	Murder
219	Manslaughter
222	Attempted murder
228	Causing bodily harm with intent
229	Administering noxious thing

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ACT

230	Overcoming resistance to commission of offence
231	Setting traps
232	Interfering with transportation facilities
233	Criminal negligence in operation of motor vehicle; dangerous driving
234	Impaired driving
240(1) & (4)	Dangerous operation of vessel, etc.
245	Assault; attempted assault
246	Assault with intent
247	Kidnapping
251(1)	Performing abortion
302	Robbery
381(1) (a)	Intimidation by violence or threats.



## CHAPTER 69

### An Act Respecting the Payment of Local Taxation by Crown Corporations

1. This Act may be cited as The Crown Corporations (Local Taxation) Act. Short title.
  
2. In this Act Interpretation.
  - (a) "Crown corporation" means a company in which not less than ninety per centum of all of the issued common shares are owned by Her Majesty in right of Newfoundland; and
  - (b) "local taxation" means taxation of any kind whatsoever imposed by or under any Act or law of the province for the benefit of a city, a municipality, local schools, or any municipal area whatsoever.
  
3. Notwithstanding anything to the contrary contained in any other Act, while a company is a Crown corporation Crown corporations exempt from local taxation.
  - (a) it shall, unless the Lieutenant-Governor in Council otherwise directs, be exempt, as to the company and as to its property, from local taxation; and
  - (b) a claim, demand, action, suit or any proceeding in law whatsoever shall not be made or taken against it for the recovery of local taxation imposed on it in respect of any period before it became a Crown corporation.
  
4. When a Crown corporation has, in the opinion of the Lieutenant-Governor in Council, developed its undertaking to the extent that it can contribute towards local taxation without casting any additional burden on Her Majesty in right of Newfoundland as its major shareholder, the Lieutenant-Governor in Council may by order Certain Crown corporations may be required to pay taxes.

- (a) direct that this Act shall no longer apply to the Crown corporation; or
- (b) subject to such terms and conditions as the Lieutenant-Governor in Council may specify, direct that the Crown corporation shall pay to any council of a city or municipality or any School Tax Authority or other municipal authority an annual amount not greater than the taxes that would be so payable by the corporation, if this Act did not apply to it,

and when an order is made under this section, the Crown corporation to which the order applies shall pay all moneys payable by virtue of or prescribed by the order.



## CHAPTER 70

### An Act Respecting Crown Grants, the Subject of Proceedings by Petition in the Supreme Court

**1.** This Act may be cited as The Crown Grants (Proceedings) Act.

Short title.

**2.** Whenever under the provisions of Section 142 of The Judiciary Act any person shall prefer a petition to the Supreme Court for or on account of any of the matters in the said section referred to against the grantee of any Crown grant or his assigns, such grantee or his assigns shall not be compelled to expend any sum of money upon the lands affected by such Crown grant from the date of the service of such petition to the date of final judgment in proceedings thereunder, and such grantee or his assigns shall not be subject to any of the conditions or covenants of the said Crown grant during the said period, and such Crown grant shall not become forfeited or be otherwise affected by the non-expenditure of money or the non-performance of the conditions or covenants during the said period.

Expenditure of moneys and performance of covenants dispensed with while grants are the subject of proceedings in Supreme Court.

**3.** If, in the proceedings under such petition, final judgment be pronounced that any party or parties to the said proceedings is or are entitled to such Crown grant, the Lieutenant-Governor in Council may, on the application of such party or parties issue or cause to be issued a new Crown grant to him or them in substitution of the former Crown grant for such term not exceeding the full term granted by said Crown grant as to the Lieutenant-Governor in Council may seem just. The said new Crown grant shall be of like form to the former Crown grant, and may be issued under the provisions of the Act of the Legislature under which the former Crown grant was issued, notwithstanding that the said Act of the Legislature may have been amended or repealed.

Substituted grants may be issued if judgment so requires.





## CHAPTER 71

### An Act Respecting Crown Lands, Timber and Water Power

#### SHORT TITLE.

1. This Act may be cited as The Crown Lands Act. Short title.

#### INTERPRETATION.

2. In this Act and in any regulation made thereunder unless the context otherwise requires Interpretation.

- (a) "authorized scaler" means a person authorized by the Minister under this Act to act as a scaler;
- (b) "control survey marker" means any marker which is installed in the ground by authority of the Minister and the location of which is, or is proposed to be, derived from the Geodetic Survey of Canada;
- (c) "Court" means the Supreme Court of Newfoundland;
- (d) "Crown lands" means all lands within the Province of Newfoundland, except such as may be in the use or occupation of any Department of the Government of Newfoundland or of any officer or servant thereof as such and such lands as may, before the enactment of this Act, have been lawfully set apart or appropriated for any public purposes and lands lawfully alienated from the Crown;
- (e) "Department" means the Department of Mines, Agriculture and Resources;
- (f) "judge" means a judge of the Court, or the Court, where a matter has been moved into Court by the judge or ordered by him to be the subject of an action in Court;

- (g) "minerals" means any naturally occurring inorganic substance but does not include limestone, granite, slate, marble, gypsum, marl, clay, sand, gravel, any building stone, volcanic ash, coal, oil, natural gas, or salt;
- (h) "Minister" means the Minister of Mines, Agriculture and Resources;
- (i) "prescribed" means prescribed by this Act or the regulations or by any rule or order made under this Act;
- (j) "regulations" means regulations made under this Act;
- (k) "surface rights" means land lawfully held by any person other than the Crown where the minerals, limestone, granite, slate, marble, gypsum, marl, clay, sand, gravel, any building stone, volcanic ash, coal, oil, natural gas or salt therein, thereon or thereunder are reserved to the Crown;
- (l) "surveyor" means, notwithstanding anything in this Act, a surveyor who is a registered member of the Association of Land Surveyors created by The Land Surveyors Act or a surveyor, not so being a member, who can lawfully be employed to make the survey in question;
- (m) "timber" means round logs and includes logs slabbed on one or two sides.

Lieut.-Governor in Council may prescribe fees where not specifically set forth herein.

**3.** The Lieutenant-Governor in Council may by regulation prescribe the fees to be paid under this Act, except where specifically set forth in the Act.

#### DIVISION OF ACT

Division of Act.

**4.** This Act is divided into Parts, as follows:

*Part I.*—Lands for Residence, Agriculture and Industry.

*Part II.*—Water Powers.

*Part III.*—Timber Lands.

*Part IV.*—Miscellaneous Provisions.

## PART I.

## LANDS FOR RESIDENCE, AGRICULTURE AND INDUSTRY.

5.—(1) The Minister may issue a lease of any Crown lands not exceeding five acres to any person for the purpose of a residence, and every such lease shall be made for a term of five years at a rental of five dollars a year and upon the condition that the lessee shall, in accordance with the regulations and any regulations made under any other Act, erect a dwelling house fit for habitation, and when the Minister is satisfied that such a dwelling house has been so erected, he shall issue a grant for a residence to the lessee: Provided, however, that with the approval of the Lieutenant-Governor in Council the terms and conditions, including the rental and the residential use, prescribed by this subsection for any lease issued thereunder may be varied or any other terms or conditions, including a different rental or a different use, may be substituted therefor and other terms and conditions may be added thereto, and, without prejudice to the Crown's right to forfeiture of the lease for other causes, if any land comprised in any such lease is used for any purpose other than residence in contravention of this subsection it shall thereupon be forfeited to the Crown.

Lease of land for residence.

(2) Whenever any person shall before the 30th day of June, 1933, have been for five years or more in occupation of any Crown lands not exceeding five acres and shall have erected a dwelling house upon the same and shall have put into cultivation at least one acre of the area, the Minister may upon proof of the facts issue to such person forthwith upon payment of five dollars a fee simple grant of the same in lieu of the lease for five years provided under subsection (1) of this section; or in case less than one acre has been put into cultivation, he may issue a grant of one acre of land, including the site of the dwelling house, upon payment of the same fee.

Residential grant where land already occupied for five years.

6.—(1) The Minister may issue a lease to any person, representing himself or herself to desire the same for the purpose of agriculture, of Crown lands not exceeding twenty acres to any one person,

Leases of lands for purposes of agriculture.

(2) The Lieutenant-Governor in Council may lease to any person, representing himself or herself to desire the same for the purpose of agriculture, Crown lands comprising over twenty acres but not more than two hundred acres to any one person.

(3) Every lease issued under this section shall be for a term of five years at a rental of five dollars a year and the lease shall contain a condition that the lessee shall clear and put into cultivation within two years ten per centum of the area comprised in the lease that is capable of being developed for agriculture and shall clear and put into cultivation within five years twenty-five per centum of such area, and if the Minister is satisfied that all of the conditions of the lease have been complied with within the time specified, he shall upon the application of the lessee issue to him a grant for agriculture, but for a period of fifteen years from the date of the lease the land comprised in any such lease or grant shall not be subdivided or used for any purpose other than agriculture, without the consent of the Lieutenant-Governor in Council and then only upon such terms and conditions as he may prescribe, and if any land comprised in any such lease or grant is subdivided or used for any purpose other than agriculture in contravention of this subsection, it shall thereupon be forfeited to the Crown.

(4) It shall further be a condition of every such lease that it shall be unlawful for the lessee at any time before he has received a grant in fee simple to cut, take or carry away from the said land any trees or timber, except in the course of clearing the said land for *bona fide* cultivation or for his actual use either for building or fencing upon or in connection with the said land, or for firewood. Any person violating this condition shall be liable to a penalty of twenty dollars for every tree or one hundred feet of timber so cut, taken or carried away, in addition to the value of the tree or lumber, to be recovered in a summary manner by any person who shall sue for the same, and also to the cancellation of his lease by the Minister.

(5) Where, during the currency of a lease issued under the provisions of this section, the lessee has failed to comply and is not likely to comply with the terms and conditions of such lease relating to the clearing and cultivation of land comprised therein during the currency of such lease, then

- (a) in the case of a lease issued under the provisions of subsection (1) of this section upon application in writing to the Minister by the lessee or some person on his behalf made as hereinafter provided; and
- (b) in the case of a lease issued under the provisions of subsection (2) of this section upon application in writing to the Lieutenant-Governor in Council by the lessee or some other person on his behalf made as hereinafter provided,

the said Minister or the Lieutenant-Governor in Council, as the case may be, may, if it appears to him expedient to do so, grant to the lessee such extension of the terms of the said lease for such period and upon such terms and conditions as the said Minister or the Lieutenant-Governor in Council may determine: Provided that application in each case shall be made during the currency of such lease but not later than three months before the termination of the demise created by the said lease whether by expiration of the term thereof or otherwise: Provided further that it shall be shown to the satisfaction of the said Minister or the Lieutenant-Governor in Council, as the case may be, that the failure of the lessee to comply with the terms and conditions of his lease is due to

- (c) the fact that the lessee or any member or members of his family is or are serving in the Forces of His Majesty or His Allies in the War of 1939-45;
- (d) the illness of the lessee or any member or members of his family; or
- (e) the inability of the lessee to secure labour at reasonable rates.

(6) Whenever any person shall before the 30th day of June, 1933, have been for five years in occupation of any Crown lands exceeding five acres and not exceeding fifty acres, and shall have put into cultivation not less than twenty-five per centum of the area, the Minister may upon proof of the facts issue to such person forthwith upon payment of five dollars a fee simple grant

Agricultural grant when land already occupied for five years.

of the same in lieu of the lease for five years provided under this section.

(7) Subject to the approval of the Lieutenant-Governor in Council, in any lease issued under this section the terms and conditions prescribed in subsection (3) may be varied or any other terms or conditions may be substituted therefor.

Precautions to be taken against adverse claims.

**7.** Every person applying for a grant under either subsection (2) of Section 5 or subsection (6) of Section 6 shall be required to declare and prove to the satisfaction of the Minister that the land was taken up and the building, cultivation and improvements made and done either by himself or by some other person all of whose equitable rights have lawfully passed to him; and the report of the surveyor shall contain a statement that careful enquiry has been made in the locality and that no person other than the applicant claims to be entitled to a grant of the said land or of any part thereof or interest therein. If others than the applicant appear to have claims, the Minister shall, in default of agreement among all persons concerned, refuse to issue a grant.

Leases of sites for mills, etc.

**8.—**(1) Where any person being the holder of a licence or licences to cut timber applies representing himself to require land as a site for a saw mill or pulp mill, or wood-working establishment or other industrial establishments of any description, to make use of the timber from the lands comprised in such licence, the Lieutenant-Governor in Council may lease to such person lands not exceeding fifty acres in extent, either within the boundaries of such timber licence or without them in a place suitable for use in conjunction with such licence, at a rental of one dollar per acre to be paid in advance on the thirtieth day of November in each year.

(2) Such lease shall be upon the condition that the land shall be used for the purpose for which it is applied for, and that upon its ceasing to be used for such purpose for three consecutive years or upon the termination of the timber licence or licences, then it shall revert to the Crown.

(3) Where such lease is situated outside the boundaries of the timber licence or licences in connection with which it is to

be used, it shall be upon the further condition that no timber shall be cut from the same except such as is necessary for clearing space for building, for fencing, or for the making of fire-breaks for the protection of the buildings.

(4) If the timber licence or licences in connection with which the said mill-site is held shall become forfeited for any reason, the lease of the mill-site shall stand forfeited or terminated also. In such case the lessee shall have the right to remove his machinery, mills and other buildings.

**9.**—(1) The Minister may issue a grant in fee simple to any person of an area of Crown lands not exceeding ten acres to any one person, subject to such terms and conditions and for such consideration as the Minister prescribes.

Grants and leases of Crown lands.

(2) The Minister may issue a lease to any person of an area of Crown lands not exceeding fifty acres to any one person in any one locality for such period and upon such terms and conditions and subject to the payment of such rents, royalties or other charges as the Minister may deem fit.

**10.**—(1) Whenever any person shall apply to the Lieutenant-Governor in Council representing himself to require Crown lands as a site for any building or erection or any rights in Crown lands, the seashore or foreshore or in public waters and land thereunder in connection with any industrial undertaking and no specific provision is made elsewhere in this Act for granting the use of any such lands, seashore or foreshore or public waters and land thereunder or any interest therein for such an undertaking, the Lieutenant-Governor in Council may, if it appears to him expedient so to do, by grant, lease or licence, as he may deem fit, vest in such person any Crown lands, seashore or foreshore or public waters and land thereunder or the right to use the same for such period and upon such terms and conditions as may in such grant, lease or licence be contained: Provided that the Lieutenant-Governor in Council, before issuing any such grant, lease or licence, may require the applicant

Grants, leases or licences respecting Crown lands and foreshore rights in certain cases.

- (a) to show that such lands, seashore or foreshore or public waters and lands thereunder are reasonably required for the purpose of such undertaking and that the granting

of such grant, lease or licence is not calculated to cause undue injury to the rights of others;

- (b) to show that there is no adverse claim or other reason why such grant, lease or licence should not be issued;
- (c) to furnish such information as in the circumstances may be required.

Reservation of  
Crown Lands.

(2) The Lieutenant-Governor in Council may, from time to time, by Order in Council published in *The Newfoundland Gazette* and in one or more issues of a newspaper published and circulating in the province, reserve and set apart any Crown land under that may be deemed useful for any such undertaking and lands, seashore or foreshore or public waters and lands there-not held by any person under any existing grant, lease or licence and may prohibit or limit the use of the same or any portion thereof for any or all purposes by the public or any members thereof and may, by such order prescribe penalties for violation of the provisions of the order.

Lands for  
purpose of  
raising livestock  
or cultivating  
wild fruit;  
bog lands for  
agricultural  
purposes.

**11.**—(1) Whenever any person applies to the Lieutenant-Governor in Council representing himself to require

- (a) Crown lands, not being bog lands, or any interest therein for the purpose of raising livestock or of cultivating wild fruit and no specific provision is made elsewhere in this Act for granting the use of any such lands for the purpose; or
- (b) Crown lands, being bog lands, or any interest therein for any purpose of agriculture, including, without limiting the generality of the foregoing, the development of pasturage or the growing of hay or vegetables,

the Lieutenant-Governor in Council may, subject to this section and if it appears to him expedient so to do, by grant, lease or licence, as he may deem fit, vest in that person any such Crown lands, or any interest therein, or the right to use the same for such period as he may deem fit, upon such terms and conditions as he may prescribe, whether the Crown lands are reserved for that purpose under subsection (3) or otherwise, and

- (c) for the purpose of this section, the expression “bog lands” means lands declared by order of the Lieutenant-Governor in Council to be bog lands for the purpose of this section.

(2) The Lieutenant-Governor in Council may, before issuing a grant, lease or licence, under subsection (1), require the applicant

Requirements to be met by applicant.

- (a) to show that the land is reasonably necessary for the purpose for which it is required and that the issue of the grant, lease or licence is not calculated to cause undue injury to the rights of others;
- (b) to show that there is no adverse claim or other reason why the grant, lease or licence should not be issued; and
- (c) to furnish such information as the Lieutenant-Governor in Council may require.

(3) The Lieutenant-Governor in Council may, by order published in *The Newfoundland Gazette* and in one or more issues of a newspaper published and circulating in the province, reserve and set apart any Crown lands that may be deemed useful for any purpose referred to in subsection (1) and not held by any person under an existing grant, lease or licence, and may prohibit or limit the use of the same or any portion thereof for any or all purposes by the public or any members thereof and may prescribe penalties for violations of the order.

Reservation of Crown lands.

(4) For the purposes of this section “livestock” includes horses, cattle, sheep, goats, pigs and poultry.

“Livestock” defined.

**12.**—(1) Any Crown lands, in respect of which an application, made under this Act, has been approved in accordance with this Act, shall be surveyed to the satisfaction of the Minister by a surveyor, and a plan together with such other information as the Minister may require shall be registered in the Department before the expiration of twelve months after the date of approval of the application.

Survey and registration of plan.

(2) Notwithstanding subsection (1), where the Minister deems it desirable the time for registering the plan of the survey referred to in that subsection may be extended by him to a maxi-

mum of twenty-four months from the date of approval of the application referred to in that subsection upon written application to him made by the applicant before the expiration of the period of twelve months referred to in that subsection.

(3) All fees and amounts payable to the Crown on account of Crown lands in respect of which an application is made shall be paid before the issue of a grant, lease or licence of the lands and within twelve months after notice to the applicant of the approval of the Lieutenant-Governor in Council, or, where applicable, by the Minister, of the application.

(4) Where a plan of the survey of the land referred to in and any other information required under subsection (1) are not received at the Department, and the fees referred to in subsection (3) are not paid, within the time limited therefor by those subsections, the application is deemed to have been cancelled by the applicant.

(5) No priority exists in respect of an application for Crown lands which are not surveyed, or upon which the fees and amounts referred to in subsection (3) were not paid within the time therein stated.

Lieutenant-Governor in Council may lay out lots for towns, villages, etc.

**13.** The Lieutenant-Governor in Council shall have power from time to time to set apart and withdraw from purchase any tract or tracts of land which it may be considered by him expedient to lay out for towns or villages, or other like public purposes, and to cause the same to be surveyed and laid out, and the lots so laid out to be sold at public auction after one month's notice in *The Newfoundland Gazette* and one other newspaper under the hand of the Minister.

Lieutenant-Governor in Council may reserve lands for public purposes.

**14.** The Lieutenant-Governor in Council may also set apart and appropriate such Crown lands as may be deemed expedient for the sites of market places, public buildings, gaols, court houses, places of public worship, cemeteries, schools, benevolent institutions, squares, parks, public or municipal housing projects, private non-profit or co-operative housing projects, urban developments or improvements to be carried out by a municipal authority, and for any other purpose, whether of the foregoing kind or not, which in the opinion of the Lieutenant-Governor in

Council may be for the public benefit, and, at any time before the issue of grants or leases therefor, may alter or revoke such appropriations as he deems expedient, and may make free grants for the purpose aforesaid of the lands so appropriated, the trusts and uses to which they are to be subjected being expressed in the lease or grants.

**15.** It shall be a condition of any grant, lease or licence under this Part of this Act, that the holder thereof shall preserve at least five per centum of all trees or wooded lands, as shelter for stock; and in cases where there are no trees, the grantee, lessee or licensee, shall plant and cultivate, or cause to be planted or cultivated, twenty trees every year for ten years for every acre contained in his grant, lease, or licence.

Preservation and cultivation of trees.

**16.** The Lieutenant-Governor in Council shall have the power to set apart such areas or tracts of Crown lands as may be deemed necessary, to be used as commons for pasturage, subject to such rules, regulations and conditions as may be prescribed by the Lieutenant-Governor in Council.

Lieutenant-Governor in Council may set aside commons for pasturage.

**17.—(1)** In any case where an island formerly inhabited has been wholly or substantially abandoned by its inhabitants but there remains upon it private property or church property or cemeteries or any other thing which may be damaged by animals, the Minister may by order declare that the pasturing of horses, cattle, sheep or swine upon it is prohibited until his further order and that animals thereon be removed by their owners by a certain time; and shall cause notice of his order to be given in the locality in such manner as he may think best; and any person setting any such animals on shore on such island, or failing to remove forthwith any of his animals which may be there at the time of the order, shall be guilty of an offence.

Prohibition of pasturage on abandoned islands.

(2) Any animal not removed by the time appointed under subsection (1), the owner of which cannot be found, may be impounded and removed and sold at auction by any officer thereto authorized by the Minister, and the proceeds of the sale, less expenses paid into the Consolidated Revenue Fund.

Impounding of animals.

Crown lands may be set aside under Minister's control for certain purposes.

**18.**—(1) Subject to subsections (2) and (3), but notwithstanding any of the other provisions of this Act, the Lieutenant-Governor in Council may, by order, set apart any Crown lands

- (a) for the purpose of livestock pasturage; or
- (b) for the purpose of cultivating or harvesting, or both, wild fruit, including, without limitation of the foregoing, blueberries,

and such Crown lands so set apart shall be under the administration and control of the Minister who may issue to any person, either alone or in conjunction with others to whom permits shall have been or may be issued, a permit to use the lands so set apart or any area thereof for any of the purposes for which they are so set apart, and a permit issued under this section shall be

- (c) subject to the payment of such fees, rentals and other charges, if any;
- (d) subject to such terms and conditions, if any;
- (e) in respect of such area; and
- (f) for such term

as the Minister shall prescribe, but the Minister is not under any obligation to subdivide any of the lands so set apart unless he considers it advisable so to do.

Publication and effect of order.

(2) Any order made under subsection (1) shall describe the lands to be set apart under that subsection and shall be published in *The Newfoundland Gazette* and has effect from the date of publication or such later date as may be specified in the order.

Interpretation.

(3) A provision of this section shall not be deemed a specific provision for the purposes of paragraph (a) of subsection (1) of Section 11.

Minerals, etc., reserved to Crown.

**19.** In all leases or grants issued under this Part of this Act, minerals, limestone, granite, slate, marble, gypsum, marl, clay,

sand, gravel, all building stone, coal, oil, natural gas and salt shall be reserved to the Crown.

**20.** All leases and grants of land made before the 30th day of December, 1940, under authority of Part I of this Act, and purporting to have been issued by the Governor in Council or the Governor in Commission shall, in all cases in which the Governor in Council or the Governor in Commission was authorized to make such leases and grants, be deemed to have been so issued.

Respecting the validity of certain leases and grants of land.

**21.—(1)** Notwithstanding any of the other provisions of this Act,

Short term permits for occupancy of Crown lands.

- (a) the Minister may issue a permit for occupancy of Crown lands, not in any one permit to exceed an area of fifty acres; and
- (b) the Lieutenant-Governor in Council may issue a permit for occupancy of Crown lands where the permit covers an area in excess of fifty acres,

where he is satisfied that such occupancy is desirable for any industrial or commercial purpose or for any fishing or hunting cabin in an area difficult of access.

(2) A permit issued under this section shall be

Contents of permit.

- (a) subject to the payment of such fees, rentals and other charges, if any,
- (b) subject to such terms and conditions, if any,
- (c) in respect of such area, and
- (d) for such term, not exceeding five years,

as the Minister or the Lieutenant-Governor in Council, as the case may be, shall prescribe.

## PART II.

## WATER POWERS.

Leases of  
water powers.

**22.** The Lieutenant-Governor in Council shall have the power to lease any water power for such term of years and subject to such rent and conditions as are hereinafter set forth.

Data to be  
furnished by  
the applicant.

**23.** Any person desiring to obtain a lease of a water power shall make application to the Minister for the same. Such application shall state with approximate accuracy the following facts:

- (a) the name of the applicant;
- (b) the Post Office address and occupation or description of the applicant;
- (c) the name or a clear description of the river, lake, or other watercourse from which water is to be diverted or used;
- (d) the place where the water is to be diverted from or in the said watercourse, located if possible by reference to some point already established by Crown lands surveyors, or by reference to some unmistakable natural feature or features; also the place where the water is to be returned or released similarly located;
- (e) the maximum quantity of water, expressed in cubic feet per second, which it is estimated will be ultimately diverted or used under the licence applied for;
- (f) the estimated average head in feet which will be available for the production of power according to the plan of development proposed;
- (g) the estimated minimum amount of energy expressed in horsepower which will be developed on the turbine shaft or other water driven motor device within five years from the date of the application or within such

other period as the applicant may state to be required for the completion of his initial development;

- (h) the estimated maximum amount of energy expressed in horsepower which it is estimated will ultimately be developed on the turbine shaft or other water driven motor device from the waters applied for;
- (i) briefly the character and extent of all principal works which it is proposed to construct for diverting, conveying, or using the water or water-power, including dams, race-ways, canals, tunnels, pipe lines and other water conduits, power houses, mills and transmission lines; (in reference to every dam there shall be given its approximate maximum length and height, also its proposed type, and the material to be used in its construction);
- (j) if storage is involved, the location of each lake, basin or other place in which it is desired to store water; also, with reference to each such place the approximate number of acres of land which it is proposed to flood, the approximate area in acres of the surface of the reservoir when filled, the estimated vertical storage range in feet, and the total capacity of storage contemplated in acre-feet;
- (k) a reasonably accurate description and the area in acres of the lands which will be required to be occupied or used in the construction, maintenance or operation of the proposed works, noting separately lands required for rights of way and lands which are to be flooded
  - (i) within Crown lands,
  - (ii) within privately owned lands;
- (l) a preliminary plan or sketch, preferably on tracing linen and cut to a uniform size of 20 x 17 or 30 x 26 inches with scale so selected as to show upon a single sheet the entire project applied for, with the approximate location of all the principal items;

- (m) the nearest neighboring works or structures completed or in the course of construction, both above and below the place of the proposed diversion, for diverting or using water for any purpose from the same source of supply, and the approximate distance and direction of each such works from the proposed works; also the names and locations of any other works or structures whatever (including bridges, railways, and canals) which might affect or be affected by the construction, maintenance or operation of the proposed works;
- (n) the approximate discharge in cubic feet per second, at or near the place of diversion of the river, lake or other source from which the water is to be diverted at high, medium and low water stages respectively, also copies of any existing measurements in the applicant's possession of the flow of the stream and a reference to all other such measurements of which the applicant has knowledge;
- (o) whether any chemical, mechanical or other fouling matter is proposed to be discharged from any works into the stream, and if so, the nature and probable quantity of such fouling matter;
- (p) whether and where ladders to permit of the passage of salmon and other fish can be constructed in conjunction with the proposed works, if said works would otherwise prevent such passage; and the plan and description of such ladders;
- (q) briefly an outline of the undertaking in respect of which the licence is desired, including the use to which the power is to be applied, any sale, delivery or transfer thereof to other than the applicant which is contemplated, the territory, if any, within such sale, delivery or transfer is to be exercised, the probable demand for power within such territory and an estimate of the capital cost of the entire undertaking;
- (r) the financial standing of the applicant with reference to his ability to carry out the proposed undertaking.

(The applicant, when requested to do so by the Minister shall file an affidavit setting forth such facts with respect to this subsection as the Minister may require, which affidavit will be treated as confidential);

- (s) if the applicant be an incorporated company, the statement shall, in addition to the foregoing information, set forth
  - (i) the names of the directors and officers of the company, and their places of residences,
  - (ii) the head office of the company in Newfoundland,
  - (iii) the amount of capital authorized, also the amount of subscribed, and of paid-up capital, specifying in regard to the latter, (a) how much has been paid in cash, and (b) in what manner the balance has been paid for, also the proposed method of raising further funds, if required, for the construction and operation of the proposed works,
  - (iv) copy of the special act of incorporation or memorandum and articles of association and a statement setting out the particular sections or parts thereof which authorize the company to make application and to carry out the proposed undertaking;
- (t) if the applicant be a municipality, town, village or other incorporated area, then the following special information shall be given in addition to that required in items (a) to (r) above, namely
  - (i) the location, area and boundaries of the municipality, town, village or other incorporated area,
  - (ii) the approximate number of its inhabitants,
  - (iii) the present indebtedness of the municipality, town or village or other incorporated area and its borrowing limit,

(iv) a certified copy of any bye-law or resolution passed by the municipality, town, village or other incorporated area respecting the application or the undertaking to which the application relates, also a certified copy of an enabling Act or other statutory provision authorizing the municipality, town, village or other incorporated area to engage in the proposed undertaking, or of any governmental or other authorization or permission in such case required;

(u) if the application is refused by the Lieutenant-Governor in Council the data referred to in this section shall be returned to the applicant if he shall so request.

Elevations to be referred to mean sea-level datum.

**24.** All elevations given in connection with the plans or other information filed by an applicant should be referred, if possible, to mean sea-level datum.

Minister may require additional information.

**25.** The Minister may, at any time while an application is pending, irrespective of any other requirements of this Act, call for such additional plans, descriptions, measurements, specifications, or other data, (whether related directly or indirectly to the proposed works and undertaking) as he considers necessary, and the same shall be furnished by and at the expense of the applicant.

Notice of application to be advertised; form and proof of notice; hearing of objections.

**26.—(1)** Upon the filing by the applicant of such data as in the opinion of the Minister are necessary to a clear understanding of the proposed undertaking the Minister shall cause the publication by and at the expense of the applicant of a notice of application in at least one issue of *The Newfoundland Gazette* and of a newspaper published and circulating in the province, and in more issues if the Minister considers it advisable.

(2) Such notice shall be marked at the top in plain letters "Water Power Application", and shall be in a form approved by the Minister, and shall give substantially the following information

(a) name and address of applicant;

- (b) date of application;
- (c) name or clear description of source of supply;
- (d) place of diversion clearly described;
- (e) maximum horse-power capacity of proposed plant;
- (f) nature of the undertaking and proposed utilization of the power;
- (g) a statement that the application has been filed with the Minister, and that protests or objections may be filed by any interested party with the Minister;
- (h) if storage or poundage of water is contemplated, the place of storage, the capacity of the intended reservoir, and a general description of the lands which will be flooded;
- (i) such other information as the Minister may require to be inserted.

(3) Forthwith, after the said publication of notices has been completed, the applicant shall file proof of the said publication, such proof to be in the form of an affidavit satisfactory to the Minister, to be accompanied, in every case, by a copy of the notice as published.

(4) If, because of protests or objections being filed, or for other reasons, the Minister considers that a hearing thereon should take place before further proceedings, he shall designate a time and place for such hearing before himself or shall name a person to preside over and conduct the same. Such hearing may be adjourned from time to time, and the applicant may be permitted for the time being to continue the preparation of his plans and the carrying on of investigations, as may be deemed advisable.

(5) The Minister or person conducting the hearing shall make his findings in writing after which the Minister shall submit the application and the findings and all the papers in connection with both to the Lieutenant-Governor in Council.

Issue of  
interim licence.

**27.** Upon the receipt of the application and of the findings of the Minister regarding protests or objections, if any, the Lieutenant-Governor in Council may, in his discretion, issue to the applicant an interim licence embodying the matters set forth in the application and authorizing and requiring the applicant to commence within one year and to complete within a period specified in such interim licence, but not exceeding five years, work upon the lines set forth in his application.

Deposit as  
guarantee of  
performance.

**28.**—(1) Within sixty days after being notified in writing by the Minister of the issue of his interim licence the interim licensee shall deposit with the Minister the sum or sums hereinafter specified as a guarantee deposit fund for the purpose of guaranteeing the performance and fulfilment by the interim licensee of the terms and conditions of his interim licence.

(2) The amount of said guarantee deposit fund shall in the case of a power undertaking be computed according to the horsepower capacity of the site as determined by the Minister, according to the following scale:

Each h.p. up to	1,000 h.p.	.....	\$2.00 per h.p.
The next	9,000 h.p.	.....	1.00 per h.p.
All over	10,000 h.p.	.....	0.50 per h.p.

(3) In the case of a storage undertaking the amount of the guarantee deposit fund shall be computed on the estimated cost of the storage development as determined by the Minister, according to the following scale:

5 p.c. on the first \$100,000 of estimated cost.

2½ p.c. on the next \$900,000 of estimated cost.

1 p.c. on the amount above \$1,000,000 of estimated cost.

(4) The guaranteeing deposit required under this section shall in no case exceed fifty thousand dollars; and may be in the form of one or more certified cheques upon a chartered bank or banks approved by the Minister.

(5) The Minister shall refund the said deposit with accrued interest, if any, to the interim licensee as the actual construction work progresses, the first, second and third quarters thereof to be refunded when one-fourth, two-fourths, and three-fourths, respectively, of the initial development have been satisfactory completed; the fourth quarter to be refunded when the final licence is issued.

(6) The interim licensee shall present to the Minister evidence of the satisfactory progress in the works to the stage required in compliance with the terms of his interim licence, in the form of a statutory declaration or otherwise as may be required.

(7) In case of any dispute as to the satisfactory completion of the first, second and third quarters of the said initial development the decision of the Minister upon the report of the Government Engineer shall be final.

(8) If the interim licensee shall fail to comply satisfactorily with the terms of his interim licence, the guarantee deposit fund shall be forfeited to the Crown.

**29.** The interim licensee, before making any material change in the works constructed or under construction in pursuance of his licence or in the location thereof authorized, shall submit a complete and satisfactory statement and plans of such proposed change to the Minister, and shall not proceed to carry out the same until such proposed change has been authorized by the Lieutenant-Governor in Council.

Changes in plans not to be made without authorization.

**30.** The Minister, the Government Engineer, or any engineer or person authorized by either for the purpose shall have free access at all times to all parts of the lands being occupied or of the works being constructed by any interim licensee for the purpose of ascertaining whether the terms and conditions of the interim licence are being satisfactorily carried out by the interim licensee.

Access to works for purposes of inspection.

**31.** Subject to this part of the Act the terms of any interim licence may be amended by a supplementary licence entered into between the Lieutenant-Governor in Council and the interim licensee; and plans and specifications previously approved may

Amendment of interim licence.

be amended with the consent in writing of the Lieutenant-Governor in Council, but any such amendment shall affect only that portion specifically covered in such supplementary or amending licence, and shall in no case operate to alter or amend or in any way whatsoever be a waiver of any other part, condition or provision of the original interim licence.

Extension of time for construction.

**32.** It shall be lawful for the Lieutenant-Governor in Council, upon satisfactory proof that the work of construction was begun within the time specified in the interim licence and for reasons of an engineering nature which could not reasonably have been foreseen by the applicant could not be completed within the period provided by the interim licence, to grant such extension of time, as may be deemed expedient for the completion of the works. No extension of time shall be granted unless it is shown by a report in writing signed by the Government Engineer that the interim licensee has satisfactorily completed the construction of a substantial part of the said initial development, and no extension of time shall be granted for a longer period than one year, and no second or subsequent extension of time shall be granted unless it is shown by report of the Government Engineer in writing that the interim licensee has completed within the extension period previously granted a further substantial part of the said initial development.

Notice of completion of initial development; survey thereof.

**33.—**(1) As soon as the interim licensee has completed his initial development and otherwise fulfilled the terms of his interim licence he shall file in the office of the Minister written notice of such completion and fulfilment.

(2) The Minister shall thereupon cause an inspection and if necessary a survey to be made of the works constructed or used and the lands and waters used or occupied in connection with the undertaking.

Issue of final licence.

**34.—**(1) Upon the completion of the initial development according to the plans previously approved and upon fulfilment and compliance otherwise with all the terms and conditions of his interim licence and of such of the provisions of this Part of the Act as are applicable to his case, the interim licensee shall be entitled to the issue in his favour by the Lieutenant-Governor in Council of a final licence authorizing the diversion, use, or

storage of water at the site in question, for the development of energy therefrom, for the utilization of such energy, and for the occupation or use of the lands of the province which, in the Lieutenant-Governor in Council's opinion, are required for the proper maintenance and operation of the works.

(2) It shall be optional with the Lieutenant-Governor in Council to issue the licence covering the rights granted with respect to the diversion and use of the waters and with respect to the occupation and use of the lands which are to be granted in the form of two or more separate indentures, but if such separate indentures are issued they shall be executed concurrently, and the terms and conditions of each such indenture shall be deemed to be incorporated in all, and non-compliance with any term or condition in any such indenture shall be taken to be non-compliance with the terms and conditions of all.

(3) Upon the issuance of any final licence all rights held and obligations assumed under the interim licence shall cease and determine.

**35.** The final licence shall embody the terms which were set out in the interim licence and in any amending licence which may have been issued.

Terms of  
final licence.

**36.—(1)** The term of a final licence shall not exceed fifty years from the time fixed in the original interim licence for the completion of the initial development: Provided however that a licence may be issued, subject to renewal upon the conditions hereinafter provided, for one or more further successive terms as may be specified in the licence but not exceeding in the aggregate forty-nine years.

Term of  
licence to be  
fifty years.

(2) If the holder of a licence shall desire to renew a licence granted hereunder containing a right of renewal, he shall give notice to the Lieutenant-Governor in Council not less than one year before the expiration of the term thereof, and if the conditions of the licence shall have been complied with, the Lieutenant-Governor in Council may, by endorsement on the licence or notice in writing to the holder of the licence, renew the licence in accordance with the terms thereof.

(3) The Lieutenant-Governor in Council may refuse to renew a licence, but if the conditions thereof have been complied with he shall not so refuse unless at least six months prior to the expiration thereof he shall have given notice to the holder of the licence of the intention so to do.

(4) If the conditions of a licence have been complied with and the Lieutenant-Governor in Council shall have given notice of his intention to refuse to renew the licence, it shall be lawful for the Lieutenant-Governor in Council, on expiration of the licence, without further proceedings, to take possession of all works and erections constructed under the licence and of every thing owned or held by the licensee within the power system and used or useful in respect of the undertaking, subject to payment of compensation as hereinafter provided.

(5) As from the date of receipt of notice from the Lieutenant-Governor in Council under subsection (4) of this section of the intention to refuse to renew a licence it shall be unlawful for the licensee to remove from the lands used or occupied thereunder or to damage or destroy any works or erections thereon or anything owned or held by the licensee within the power system and used or useful in respect of the undertaking.

(6) Compensation payable under the provisions of subsection (4) of this section shall be paid on the basis of the value of the undertaking as a going concern at the time of taking possession by the Lieutenant-Governor in Council.

(7) If the Lieutenant-Governor in Council and the holder of the licence are unable to agree upon the compensation to be paid within six months after the said notice has been given by the Lieutenant-Governor in Council either party may refer the matter for determination by arbitration as hereinafter provided.

(8) The Lieutenant-Governor in Council shall appoint one arbitrator and the licensee another and such two arbitrators shall appoint a third, and the award of any two of them, signed by them, after hearing both parties and their witnesses as to such compensation, shall be final. Should either party neglect or refuse, upon being required by the other, to appoint an arbitrator within ten days after being so required, or should the two arbitra-

tors when so appointed not agree to the appointment of a third within ten days after their appointment, it shall be lawful for the Supreme Court or any judge thereof, upon the application of either party, to appoint an arbitrator for the party refusing, omitting or neglecting to make such appointment of such third arbitrator, and the arbitrator when so appointed shall have the same power in all respects as if appointed by either party, or by two arbitrators. The provisions of The Judicature Act, relating to arbitration shall, notwithstanding the provisions of Section 195 of the said Act, apply to any arbitration hereunder.

(9) If a licence shall not be renewed upon expiration of the original term, or of any further term for which it has been renewed, then all rights thereunder shall absolutely cease and determine without further proceedings, and all lands entered upon, used or occupied thereunder shall forthwith revert to the Crown, together with all permanent works and erections thereon.

**37.**—(1) The annual licence rental in any case shall begin to run not later than from and after the date fixed in the original interim licence for the completion of the initial development whether the same shall have been completed or not. Extensions of time from any cause whatsoever shall not affect this provision. Rental.

(2) The first payment of annual rental shall be for the part of the year embraced between the date fixed for the completion and the end of the then current calendar year. Subsequent rental payments shall cover the rentals for each successive calendar year or the part thereof during which the licence is in force, or the licensee continues operations.

(3) Every licensee shall, on or before the thirty-first day of March following each year of the interim and final licence periods submit all data required by the Minister for the determination of his rental for the preceding calendar year. The Minister shall immediately proceed with the preparation of statements of rentals due for such calendar year and shall give the licensee notice thereof. Such rentals shall be payable within sixty days after the giving of such notice.

(4) If any rentals are not paid on or before the latest date when by these regulations they are payable, ten per centum of

the amount of such rentals shall be added thereto, and the total amount shall bear interest compounded annually at eight per centum from the said latest date until paid.

(5) The rentals together with ten per centum added by way of penalty and interest as above provided shall be a first lien or charge upon the waterpower development, property, assets, rents and revenues of the licensee, and shall attach to the said development, property and assets in priority to any incumbrance irrespective of change of ownership.

(6) If any rental remains unpaid for more than one year after the latest date when by this Act it becomes payable, the licensee shall again be given notice thereof, and if not paid within sixty days after such notice has been given, the Minister shall

(a) request the Attorney General to sue in any court of competent jurisdiction for the amount thereof together with the ten per centum added and interest as above provided, as a debt due to Her Majesty, and the production of a written statement by the Minister of the sums so payable shall be *prima facie* evidence of such, and to supplement such action by garnishment proceedings against any persons indebted to the licensee for the purchase of electrical energy or other product of the undertaking, or by proceedings to foreclose the lien referred to in the last preceding subsection; or,

(b) take or initiate such action as is provided for general cases of default as set out in Section 45.

(7) The acceptance of rental in any case shall not be or be deemed to be a waiver of any of the terms or conditions which have been accepted by the licensee.

(8) The rentals to be paid shall be such as may be determined from time to time by general regulations of the Lieutenant-Governor in Council and published in *The Newfoundland Gazette*.

**38.**—(1) Every licence shall be valid and effective to authorize the entry upon or use or occupation of any lands of the province only in such manner and to such extent and for such length of time as may be necessary for the purpose of constructing, maintaining and operating the works authorized to be constructed, maintained and operated under such licence.

Effectiveness of licence to authorize entry upon or use of lands.

(2) If, because of a change in the location of the said works, or because of their non-user or abandonment, or for any other reason, continued or further entry upon or the use or occupation of such lands in whole or in part for the said purposes becomes, in the opinion of the Lieutenant-Governor in Council, unnecessary, the Minister shall give the licensee written notice of the contemplated withdrawal of such lands and the reasons therefor, and such lands may thereupon be withdrawn in whole or in part from the operation of the licence, by agreement of the parties. If the Minister and the licensee cannot reach a satisfactory agreement as regards the contemplated withdrawal within sixty days after the giving of the said notice, the Minister may refer the matter to the Supreme Court for determination.

(3) The Supreme Court after hearing the matter may make an order withdrawing the said lands in whole or in part from the operation of the licence.

**39.**—(1) Lands of the province required only for the purpose of flooding the same, whether in connection with a storage reservoir or for regulating the flow of a stream or otherwise, shall be set out in the interim or final licence separately from the lands required for other purposes and no license shall be valid to convey any further use of such lands than the right of flooding the same in such manner and to such extent and at such times as may be required for the purposes of the undertaking.

Right to flood public lands; such lands to be specifically mentioned in licence.

(2) Every grant of a right to flood lands of the province in connection with any undertaking shall be subject to the right of Her Majesty to grant additional liberty or privilege to any person for any purpose or in any manner to enter upon, use or occupy the said lands: Provided always that the rights of the interim or final licence, as the case may be, shall not, in the opinion of the Lieutenant-Governor in Council, be prejudicially interfered with by any such grant.

(3) Every licensee shall, to the satisfaction of the Minister, clear and keep clear from timber, brush and other materials, all lands which are to be flooded.

(4) Such flooded lands shall not be fenced or otherwise enclosed except the Minister's consent in writing be first obtained.

Lands forming part of bed of waters to be specifically mentioned in licence.

**40.**—(1) Lands forming part of the bed of any lake, river, stream or other watercourse, the use or occupation of which is required for the site of works authorized, or for the construction or the operation thereof, shall be set out in the interim or final licence separately from lands required for other purposes, and no interim or final licence shall convey any exclusive right in or to the use or occupancy of such lands, or any further right than may be required from time to time for the actual construction and operation of the said works.

(2) Every grant of a right to use or occupy any lands of the province forming part of the bed of any lake, river, stream, or other watercourse shall be subject to the right of Her Majesty to grant additional liberty or privilege to any person for any purpose or in any manner to enter upon, use or occupy the said lands provided always that

- (a) the rights of the licensee shall not be prejudicially interfered with by any such grant;
- (b) the Minister shall give the licensee notice of the intention to grant such additional liberty or privilege, and an opportunity of being heard.

Roads or other public works not to be affected without special leave.

**41.** No roads, trails, telephone lines, buildings or other improvements, property of the Crown, shall be removed, altered or in any way affected by any interim or final licensee in the construction or operation of his works without the Minister's consent in writing having been first obtained, and except upon such conditions as the Minister by such writing may impose. The Minister, if he deems it necessary, may require the licensee to furnish a bond for the satisfactory carrying out of the provisions of this section.

**42.** Upon a report being made by the Government Engineer that a licensee has not developed the amount of power for which there is a public demand at remunerative prices and which could be reasonably developed from the flow of water granted under his licence or controlled by him, the Lieutenant-Governor in Council may order such licensee to develop and render available for public use the additional amount of power for which there is, in the opinion of the Lieutenant-Governor in Council, a public demand, up to the full extent possible from the amount of water granted under such licence and within a period to be fixed by the Lieutenant-Governor in Council, which period shall be not less than two years after such licensee or the person in charge of the existing works shall have been notified of such order; and in default of compliance with such order the provisions of Section 45 shall be applied.

Enforcement of full development of power to meet public demand.

**43.** If a licensee desires to develop, sell, use or dispose of any greater quantity of power than authorized by his licence whether such increased disposal of power does or does not necessitate any addition to or alteration in the works, or desires to use or dispose of any power in connection with his undertaking in a manner or for a purpose other than as provided in such licence, he must first apply to the Lieutenant-Governor in Council for a licence authorizing such additional development, sale, use or disposal or authorizing such use or disposal in such other manner or for such other purpose, as the case may be.

Licence authorizing increase in extent of power development.

**44.** Every licensee whose undertaking involves the sale, barter, or exchange of the power authorized to be developed under his licence shall sell power to the Crown when so required by the Minister at as low a price as is given to any other consumer for a like use at the same time and under similar conditions: Provided always that such request is within the capacity of the said site and that the rights of any other consumer then holding a binding contract for the delivery of power are not thereby prejudiced.

Sale of power to the Crown.

#### PENALTIES FOR DEFAULT BY LICENSEE.

**45.**—(1) If a licensee, in the opinion of the Lieutenant-Governor in Council, has failed to observe or perform any term or condition, which, under his licence or this Part of the Act, he is required to observe or perform, the Lieutenant-Governor in

Proceedings in case of default of licensee.

Council may, upon giving such licensee not less than sixty days' notice, refer the matter of such non-observance or non-performance to the Supreme Court, and if the Court finds that the licensee has failed in his obligations, it may

- (a) order specific performance by the licensee of the terms of the licence;
- (b) order the payment of a sum by way of liquidated damages for the licensee's failure to perform the said terms.

(2) If after any such order is given under the two preceding paragraphs, the non-observance or non-performance on the part of the licensee should be continued, or if the licensee should refuse or fail to comply satisfactorily with any such order, or if the Court should deem that non-compliance of the licensee is of such a nature that the foregoing remedies are inapplicable, the Court may

- (a) authorize any person immediately and without further proceedings to take possession of all works, lands and properties whether real or personal, owned or held by the licensee within the power system and used or useful in respect of the undertaking, including books, statements, accounts, papers and records appertaining to such undertaking and to operate, manage and control the said undertaking, and to do all other things required to be done in the conducting or carrying on of the said undertaking, until
  - (i) a sufficient sum shall have been accumulated exclusive of all operating expenses and all costs of taking possession to liquidate the sums payable by the licensee and interest thereon and the cost of any proceeding connected therewith, or
  - (ii) such other conditions are carried out as may, in the opinion of the Court, have been required to satisfy the terms of the licence or regulations;
- (b) order that upon a certain date not earlier than twelve months after the date of such order the licence shall be

cancelled, and that not earlier than six months from the date of the said order, and not later than the termination of the period fixed for cancellation, the lands, works and properties, whether real or personal, owned or held by the licensee, and used or useful in respect of the power development, shall be sold at execution sale.

(3) If an execution sale is ordered as set out in paragraph (b) above, the Lieutenant-Governor in Council upon the advice of the Minister, shall fix an upset price below which the properties may not be sold. The Minister shall also prepare a stipulation relative to the rights to be acquired and obligations to be assumed by the successful bidder, and no one shall be permitted to bid at such sale who has not previously agreed in writing to sign and abide by the terms of such stipulation and who has not been accepted by the Minister as a bidder, and who has not deposited, by way of guarantee, a sum equivalent to one-half of that required of interim licensees under Section 28 hereof.

(4) The guarantee deposit mentioned in the last preceding subsection shall be returned to unsuccessful bidders immediately upon termination of the sale; and the successful bidder's deposit may be returned as soon as in the opinion of the Court the transfer has been satisfactorily consummated and operation of the works and undertaking is being satisfactorily conducted.

(5) If there is not a satisfactory buyer at the first execution sale, a second sale shall be held after a lapse of four months, under the same conditions as the first sale, except that the upset price of the sale shall not exceed the sum which represents the obligations of the licensee to the Crown as fixed by the Supreme Court and if no bids are received equal to or in excess of this sum from accepted bidders, the licensee shall forfeit all his rights, and the works and undertaking shall become the property of the Crown without any compensation to the licensee.

(6) Any surplus arising out of a sale under this section, above the sum which in the opinion of the Court will satisfy the obligations of the licensee shall be repaid to the licensee.

(7) If the licence has been cancelled under the provisions of paragraph (b) of subsection (2) hereof, and if, for any reason,

the procedure provided in subsections (3) to (6) has not been completed, the Court may make any orders with respect to taking over and operating the works and undertaking of the licensee for the time being as it may deem equitable under all the circumstances.

#### MISCELLANEOUS PROVISIONS.

Acceptance of licence and undertaking to perform same.

**46.** Before any licence is executed the Minister shall submit to the prospective licensee a draft of the proposed licence and shall secure from such licensee an acceptance thereof and an undertaking to observe and fulfil all the terms and conditions which under such licence and under this Part of the Act such licensee is required to observe or fulfil. Such acceptance and undertaking shall be made to bind the executors, administrators and assigns, or in the case of a corporation, the successors and assigns of the prospective licensee.

Alteration of dates of payment of rentals, etc.

**47.** If the Minister considers it advisable in order to systemize the accounting work of the Department to change the times of payment of rentals or other sums payable under any existing licence or other concession, he may, by giving the licensee sixty days' notice in writing, readjust such times of payment: Provided always that the aggregate payment to be made under the said licence or other concession is not increased by virtue of the authority hereby conferred.

Temporary disposition of lands reserved for ultimate use in connection with water-power.

**48.** Where lands have been reserved by the Lieutenant-Governor in Council as being valuable for the development of any water-power to be dealt with only under this Part of the Act, but cannot, in the opinion of the Lieutenant-Governor in Council, be utilized in connection with such water-power development for a number of years, and where, in the opinion of the Lieutenant-Governor in Council, the granting of temporary leases or licences of occupation for other purposes will not interfere with the purposes of such reservation, applications for the temporary use and occupation of lands for such other purposes may be considered by the Lieutenant-Governor in Council and conditional leases or licences granted by him: Provided always that it shall be stipulated in every such conditional lease or licence that when, in the opinion of the Lieutenant-Governor in Council, such lands are required in connection with such water-power

development it shall be lawful for the Lieutenant-Governor in Council on giving the conditional lessee or licensee not less than six months' notice of such cancellation by writing under his hand to cancel such lease or licence and determine the rights thereby conferred, and repossess himself on behalf of the Crown of the said lands and all improvements thereon without any compensation whatever being paid to such conditional licensee or lessee.

**49.** The Minister may from time to time make such supplemental rules regarding such matters as the nature of plans and specifications to be filed, the prescribing of forms to be used, the procedure to be followed in connection with various inquiries and matters arising under this Part of the Act as may, in his opinion, be desirable.

Minister may make rules as to procedure.

**50.**—(1) The Lieutenant-Governor in Council may grant, on such terms as he may deem expedient, to the owner or lessee of a water power held otherwise than under this Act easements along highways and over Crown lands for transmission lines and easements or licences for the raising of the level of the waters in any lake or pond to any level required for the efficient development thereof.

Grants of easement for transmission lines and to flood lands; regulations.

(2) The Lieutenant-Governor in Council may make regulations, which shall be published in *The Newfoundland Gazette*, imposing penalties for breach of any conditions imposed under the provisions of the preceding subsection for the purpose of securing the proper construction of any works and the safety of the public, which penalties shall be recoverable on summary conviction and shall not exceed the sum of two hundred dollars for any offence and, in default of payment, imprisonment not exceeding six months.

**51.**—(1) No person shall commence the construction or replacement of any dam for the diversion or storage of water in connection with the development of water power under rights acquired under this Act or otherwise unless he has delivered to the Government Engineer plans showing the location of the dam in relation to the surrounding land and particulars of its length, height and width and of its type and the material to be used therein and such further plans and particulars as the Government Engineer may require and unless the Government En-

Construction of dams to be approved by Government Engineer.

gineer has in writing certified that in his opinion the proposed dam will be reasonably safe, strong and durable.

(2) The construction or replacement of any such dam shall be in accordance with such plans and particulars.

(3) Every person violating or failing to conform with any provisions of this section shall be liable to a penalty not exceeding five thousand dollars, recoverable in the Supreme Court by proceedings in the name of the Attorney General and the said Court may, by injunction, restrain any such person from proceeding with any such construction or replacement unless the same is in accordance with the provisions of this section and the said Court may order any such person within such time as may be limited by such order to remove any such dam or to repair or replace the same to the satisfaction of the Government Engineer.

#### SMALL WATER POWERS.

Small  
water powers.

**52.** In the case of applications for small water powers the capacity of which in the opinion of the Lieutenant-Governor in Council upon the report of the Government Engineer does not exceed under average usable flow conditions one hundred horsepower and which are to be used for the direct driving of a water-wheel or other device connected with a saw mill or similar small mechanical establishment and not primarily for the development of electrical power, the Lieutenant-Governor in Council may on the recommendation of the Minister make regulations in relation to applications and licences and the rates of rental to be paid therefor: Provided, however, the provisions of Sections 23 (a), (b), (c), (d), (e), (i), (j), (k), (l), (o), (p), (q), (s), 26, 36 and 41 of this Part of the Act shall not be dispensed with.

Lieutenant-  
Governor in  
Council may  
make certain  
assurances  
of land and  
rights therein.

**53.—**(1) Notwithstanding any of the other provisions of this Act and subject to subsections (3) and (4), the Lieutenant-Governor in Council may,

(a) upon such terms and conditions, and

(b) for such consideration, including, without limiting the generality of the foregoing, such royalties and rentals,

as he may prescribe, assure to any person any land or rights therein belonging to the Crown in right of the province, and not then granted, leased or otherwise alienated to any other person or agreed to be so granted, leased or alienated, as may be necessary for any works established on or before the 1st. day of October, 1964, by such person for the purpose of developing, generating or transmitting hydro-electric power or energy.

(2) Any assurance granted pursuant to this section may be by way of grant, lease, licence or permit, as the Lieutenant-Governor in Council may prescribe.

Form of assurance.

(3) Nothing in this section shall be deemed to confer, or to empower the Lieutenant-Governor in Council to confer, on any person the right to

Restriction of powers under this section.

(a) develop; or

(b) establish works, other than those already established on or before the 1st. day of October, 1964, for the purpose of developing

more hydro-electric power or energy than that being developed or capable of being developed by the said works as established at the said date.

(4) This Act shall be read and construed as subject in all respects to the provisions of

This Act subject to certain other Acts and a certain Trust Indenture

(a) Sections 13 and 41 and all other provisions of The Newfoundland and Labrador Power Commission Act;

(b) Section 3 and all other provisions of The Newfoundland and Labrador Power Commission (Water Power) Act; and

(c) the Trust Indenture made as of the 15th. day of February, 1965, by and between Her Majesty in right of the province represented by the Honourable Frederick W. Rowe, Minister of Finance and Newfoundland and Labrador Power Commission and The Royal Trust Company and registered in the Registry of Deeds for Newfoundland in Volume 737 at Folios 243-325,

and whenever this Act conflicts with any of the provisions of the Acts referred to in paragraphs (a) and (b) or of the Trust Indenture referred to in paragraph (c), the provisions of the Acts referred to in paragraphs (a) and (b) and of the Trust Indenture referred to in paragraph (c) shall prevail and any assurance granted pursuant to this section shall, to the extent of such conflict, be void and of no effect.

Definition.

(5) For the purpose of this section "works" includes any building, plant, machinery, installation, material, dam, canal, device, fitting, apparatus, appliance or equipment established, acquired or utilized or useful for the development, generation or transmission of hydro-electric power or energy.

### PART III.

#### TIMBER LANDS.

Licences to cut timber; reservations.

**54.**—(1) A licence to cut timber on Crown lands referred to in this Act may be granted under and in accordance with this Act and the regulations, but not otherwise, and any such licence may not be granted on lands situated within three miles of tidal waters.

(2) The Lieutenant-Governor in Council may by order from time to time reserve any tract or tracts of timber land from application and sale under this Part of the Act, and such order shall be published in *The Newfoundland Gazette*, and during the period of such reservation applications for licences under this Part of the Act shall not be receivable by the Minister.

Application to purchase licence.

**55.** Any person desiring to purchase a licence to cut timber upon Crown lands shall make application in writing to the Minister setting forth in general terms the area in which he desires to purchase timber.

Guarantee deposit.

**56.** Before an application for a timber licence shall be considered the applicant shall deposit therewith in cash or accepted cheque upon a responsible bank the sum of \$100 if the tract applied for contains an area of five square miles or under; \$250 if the area is more than five square miles and does not exceed

ten square miles; and \$500 if the area is over ten square miles and up to twenty-five square miles.

**57.** Not more than twenty-five square miles shall be included in one application or in one licence.

Maximum area under a licence.

**58.**—(1) When the Minister has received an application for a timber licence he shall submit it with his recommendations to the Lieutenant-Governor in Council within ninety days after the receipt thereof, and the Lieutenant-Governor in Council may in his discretion allow or disallow the application.

Application to be submitted for approval of Lieutenant-Governor in Council.

(2) Where any application referred to in subsection (1) is not allowed by the Lieutenant-Governor in Council, the applicant shall be so informed by the Minister, and no further action shall be taken in respect of such application.

(3) Where an application referred to in subsection (1) is allowed by the Lieutenant-Governor in Council, the Minister shall thereupon cause the tract applied for to be laid off on a map in the Department in such form and with such boundaries as may appear most convenient and shall estimate the cost of surveying and cruising the tract, and the applicant shall deposit further with the Minister a sum sufficient to pay the cost of surveying, cruising and advertising the sale in the manner prescribed by this Act.

**59.** The Minister shall then forthwith cause the tract or area to be surveyed and cruised for the purpose of making an estimate of the nature and quantity of timber thereupon. Such survey and cruising shall be entrusted to a competent person or persons who besides fixing and ascertaining the boundaries shall make as exact an estimate as possible of the quantity of timber on the tract, ascertain its general condition, its accessibility, and any other matters that may be necessary to determine the value of the timber and to enable the Minister to fix an upset price, and shall furnish a report thereon under oath to the Minister.

Minister to cause lands to be surveyed and cruised.

**60.** When in the opinion of the Minister there are natural boundaries confining the timber on the tract applied for a survey of the boundaries need not be ordered.

Survey need not be ordered when there are natural boundaries.

Upset price to be fixed.

**61.** Upon receipt of the report hereinbefore mentioned, together with such further evidence, if any, as the Minister may think it desirable to obtain, the Minister shall subject to the prior approval of the Lieutenant-Governor in Council fix an upset price at which the tract shall be disposed of, which will include the cost of survey and no tract shall be sold at less than the price so fixed.

Notice of sale by advertisement.

**62.** No licence shall be disposed of until notice of the sale has been given for a period of not less than thirty days by not less than weekly insertions in *The Newfoundland Gazette* and in a newspaper published and circulating in the province.

Notices of sale by mail to persons on list.

**63.** There shall be kept in the Department a list of persons to whom notice of all sales of timber shall be sent by registered mail not later than the first issue of the advertisement referred to. Any person making application in writing and paying a fee of \$5.00 shall be entitled to have his name placed on the said list, and no names shall be removed therefrom until after the expiration of sixty days from the date of a notice to be given in writing to the person so named and sent by mail to his last known address, enquiring whether he desires to have his name retained on the said list.

Contents of notice of sale.

**64.** The notice of sale shall give a full description of the area or tract, the upset price and the place, day and hour at which such sale is to be held.

Sale to be by public auction.

**65.** The place of sale shall be open to the public, and the sale shall be by public auction conducted by such official of the Department as the Minister may nominate, and as a part of his official duties.

Sale to be to highest bidder.

**66.** The licence to cut timber on the said tract shall be sold to the highest bidder who shall comply with all the conditions of this Act.

Payment of or security for purchase price; avoidance of sale on default; contract to be signed by purchaser.

**67.** If the purchaser should be the applicant who paid for the surveying, cruising and advertising, the amount so paid together with his deposit shall be credited to him on the purchase price, but if he should not be the purchaser the same shall be returned to him forthwith in cash. If there be no sale by reason

of the upset price not being bid, the deposit shall be returned, but not the cost of surveying, cruising and advertising:

- (a) Purchases to the amount of one thousand dollars or under shall be paid one-half in cash at time of sale and notes of equal amounts shall be given for the balance maturing in three and six months thereafter.
- (b) Purchases over one thousand dollars and not exceeding five thousand dollars shall be paid one-third in cash at time of sale and notes shall be given for the balance in three equal instalments payable in three and six and nine months thereafter.
- (c) Purchases over five thousand dollars and not exceeding ten thousand dollars shall be paid one-quarter in cash at time of sale and notes shall be given for the balance in four equal instalments payable in three, six, nine and twelve months thereafter.
- (d) Purchases over ten thousand dollars shall be paid one-fifth in cash at the time of sale and notes shall be given for the balance in four equal instalments payable in three, six, nine and twelve months thereafter.
- (e) Purchasers may, if they so desire, pay the whole amount of the purchase money in cash or by accepted cheque at time of sale.
- (f) The rate of interest payable on notes given in payment of a timber licence shall be six and one-half per centum per annum to date of maturity and seven and one-half per centum per annum thereafter. Notes given as herein provided shall be made payable at a bank in the City of St. John's.
- (g) Payments made at time of sale, must be made in coin or bank notes or by accepted cheque on a chartered bank payable to the order of the Minister.
- (h) If default is made in any payment required by this section the sale shall automatically and without suit or

other proceedings stand forfeited and void, and payments theretofore made shall stand forfeited to the Crown.

- (i) If default is made in paying immediately after the sale the amount then required to be paid in cash, the Minister shall give three days' notice stating that such default has been made and that the area or tract will be re-auctioned on the fourth day after the original sale. At such auction the bidder in default shall not be permitted to bid or purchase. If default is made in payment of any of the notes when they come due the Minister shall immediately give thirty days' notice as of an original sale stating that the purchaser has defaulted.
- (j) Persons to whom tracts are awarded at a sale shall sign a contract agreeing to carry out and complete the purchase on such terms and conditions as the Minister may decide.

Bond for part of purchase price not paid.

**68.** No licence for any tract shall be issued until the full amount of the purchase price and the ground rent for the first year have been paid. Should, however, the purchaser of a tract desire to commence operations before the notes given have been paid, the Minister may authorize him to do so on being furnished with a bond in his favour by an acceptable guarantee company for the prompt payment of every unpaid instalment of the purchase price of the tract together with interest accrued thereon.

Licence to be issued to purchaser; ground rent.

**69.** Upon payment as aforesaid the Minister shall issue to the purchaser a licence to cut timber upon the said tract, subject to a ground rent of ten dollars per square mile per year, payable in advance.

Effect of licence.

**70.** The licence shall vest in the licensee subject to the conditions mentioned in the licence all right of property whatsoever in all trees, timber, lumber and other products of timber which he is entitled by the licence to cut and which have been cut within the tract during the continuance thereof, whether such trees, timber, lumber or other products be cut by authority of the licensee or by any other person with or without his consent; and shall entitle the licensee to seize as his property timber of any

kind cut upon the tract where the same is found in possession of any unauthorized person, and also bring action or proceedings against any person unlawfully in possession of any such timber, and all proceedings pending at the expiration of the licence may be continued and completed as if the same had not expired.

**71.** All timber licences shall expire on the thirtieth day of November next after the date on which they are granted.

Expiry of licences.

**72.** A licence shall be renewable from year to year while there is on the tract timber in sufficient quantity to be commercially valuable, if the terms and conditions of the licence and the provisions of this Act and the regulations affecting the same have been fulfilled: Provided that such renewal shall be subject to the payment of such rentals and dues and to such terms and conditions as are fixed by the regulations in force at the time renewal is made.

Renewal of licences.

**73.** A licence to cut timber may be assigned provided all rents and other payments to the Crown have been made and all conditions have been complied with. Every such assignment shall be registered in the Registry of Deeds and a certified copy furnished to the Department for purposes of record.

Assignment of licences.

**74.—(1)** Whenever the Lieutenant-Governor in Council considers it desirable that the timber on land comprised in a licence to cut timber on Crown lands or in fee simple grant should, because of its proximity to tidal water or otherwise, become available for use by the public, the Lieutenant-Governor in Council may accept a surrender of the rights of the licensee or grantee in and to all or any of the timber and the land comprised in the licence or grant and any land so surrendered shall become Crown lands and in exchange therefor the Lieutenant-Governor in Council may grant or make to the holder of such licence or such grant a licence to cut timber upon or a grant of, as the case may be, another area of Crown lands and any licence so granted shall, notwithstanding anything in this Act or any other Act contained, be for such term as may be equivalent to the residue of the term of, and contain the same terms and conditions as, the licence in which the surrendered land was comprised.

Exchange of grants and licences.

(2) Whenever in the circumstances appearing in subsection (1) a licence to cut timber is held by a licensee from a person other than the Crown, the Lieutenant-Governor in Council may accept a transfer of such licence from the licensee and grant to him in exchange therefor a licence to cut timber on Crown land subject to such terms and conditions as the Lieutenant-Governor in Council may deem expedient.

(3) The exchange mentioned in subsection (2) may be made and shall have effect notwithstanding that the licensee is prohibited by the terms of his licence from alienating any of his rights thereunder.

Voluntary  
exchange  
of timber  
cutting rights.

**75.—**(1) The Lieutenant-Governor in Council may by order authorize the Minister to acquire for the Crown all or any part of

- (a) all of the right to cut timber on any land located in Newfoundland held by any person, company, partnership or association;
- (b) the right to hold possession of the land referred to in paragraph (a) for the purpose of exercising the right to cut timber referred to in that paragraph;
- (c) the title to all improvements on the land referred to in paragraph (a) reasonably necessary for the exercise of the right to cut timber referred to in that paragraph; and
- (d) the right to build and maintain all roads, erect and maintain all buildings, structures and other works and do all other things on and in the land referred to in paragraph (a) reasonably necessary for the exercise of the right to cut timber referred to in that paragraph,

whether the land or any of such rights or improvements are held under a grant, lease, licence or other title whatsoever, whether possessory or otherwise.

(2) When an order is made under subsection (1) the area affected shall be described and delimited in the order.

(3) Acquisition of cutting rights pursuant to an order made under subsection (1) may be made under mutual agreements whereby the right to cut all or designated species and types of timber on Crown lands anywhere in the province and to the extent approved by the Lieutenant-Governor in Council may be exchanged for the cutting rights so acquired, or the acquisition may be made for such other consideration as the Lieutenant-Governor in Council approves.

(4) An agreement made under subsection (3) shall contain such additional terms and conditions as may be approved by the Lieutenant-Governor in Council.

(5) An acquisition of cutting rights may be made under this section and shall have effect notwithstanding that the holder of the cutting rights with whom the Minister makes the exchange is prohibited by the terms of his grant, lease, licence or other title of any kind whatsoever from alienating any of his rights thereunder.

(6) The Minister may sell, lease or otherwise dispose of any cutting rights acquired under this section, for such consideration and upon such terms and conditions as the Lieutenant-Governor in Council approves.

(7) In this section "cutting rights" means the rights and title referred to in paragraphs (a) to (d) of subsection (1).

**76.** Every timber licence shall contain the following conditions:

Conditions in licences.

- (a) Every person cutting timber on Crown lands shall take from every tree he cuts down all the timber fit for use and manufacture the same into sawn lumber or some other saleable product, and shall dispose of the tops and branches and other debris of lumbering operations in such a way as to prevent as far as possible the danger of fire, in accordance with the directions of the proper officers of the Department. If after written notice from an inspector his instructions as to the disposal of slash, tops, branches and other debris are not carried out within ten days from the date of such notice the in-

pector shall give such person a further notice requiring him to cease all lumbering operations in the locality in such further notice mentioned until the terms of the first mentioned notice have been carried out, and for every day or part thereof that such operations are continued after the delivery of the second notice and while the terms of the first notice are uncomplished with, such person shall be subject to a penalty of one hundred dollars to be recoverable in a summary manner at the suit of the inspector before a stipendiary magistrate. All such penalties shall be paid to the Minister for the use of the province.

- (b) Every such person shall prevent all unnecessary destruction of growing timber on the part of his men and exercise strict and constant supervision to prevent the origin and spread of fire, and shall also comply with all regulations made in that respect by the Lieutenant-Governor in Council and with all laws and regulations in that respect in force.
- (c) That the licensee shall furnish to the Minister at such periods as may be required by the Minister by regulations under this Act, returns sworn to by him or his agent or employee cognizant of the facts, showing the quantities cut, manufactured, sold or disposed of, of all sawn lumber, timber or any other product of timber from the tract in whatever form the same may be.
- (d) That the licensee shall keep books and records in which shall be entered reports of all timber cut and the quality manufactured upon or removed from the tract, which books shall be entered up daily and shall be produced for the inspection of any officer of the Crown whenever required for the purpose of verifying his returns aforesaid.
- (e) The licence shall also be subject to the right of the Crown to withdraw at any time from the said timber tract any portion or area of the lands comprising it which is required for water power purposes or as necessary in connection therewith. The Lieutenant-Governor

in Council may upon being satisfied that such portion or tract of the said land is necessary for the purposes of the said water power, decide that such portion or tract should be withdrawn from the lands so licensed and thereupon the said portion or tract shall be so withdrawn; upon the condition, however, that the lessee or lessees of the said water power, his or their executors, administrators or assigns, shall and will pay to the licensee of the tract his executors, administrators or assigns, the value of all timber of six inches and over in diameter at the stump on the portion of the area so withdrawn, the value of such timber, in case of dispute, to be fixed by arbitration, and the provisions of The Judicature Act in relation to arbitration shall apply thereto.

- (f) The licence shall also be subject to the condition that the Government of Newfoundland or any person on behalf thereof with the written authority of the Minister may take from the ground covered by the said licence standing timber of any kind without compensation therefor to be used in the making of such roads, bridges or public works including sleepers for railways as lie within the said tract but not elsewhere.

**77.** Any ground rent, royalty or other dues to the Crown on timber cut within any limit, which are not paid at the time when they become due and payable, shall bear interest at the rate of six per centum per annum, until paid, and shall be a lien upon any timber cut within such limits; and whenever the ground rent on any limit or any royalty or other dues to the Crown on any timber are unpaid the Minister may seize so much of the timber cut on such limit and in possession of the licensee or on his premises, whether sold or unsold, as will, in his opinion, be sufficient to secure the payment of such rent, royalty or other dues, and all interest and expenses of seizure and sale, and may detain the same as security for payment thereof; and if such payment be not made within one month of such seizure, the Minister may sell such timber by public auction, and after deducting the sum due to the Crown the interest thereon and expenses aforesaid, he shall pay over the balance, if any, to the licensee or owner of the timber.

Payments to Crown; interest on same when overdue; lien for same; enforcement of payment.

Use of slides,  
dams, piers  
and booms.

**78.**—(1) No licence or grant of any Crown land shall give or convey any right or title to any slide, dam, pier or boom or other work for the purpose of facilitating the descent of timber or saw logs, previously constructed on such land, or in any stream passing through or along such land, unless it is expressly mentioned in the licence or grant that such slide, dam, pier or boom or other work is intended to be thereby granted.

(2) The free use of slides, dams, piers, booms or other works on streams to facilitate the descent of lumber and saw logs, and the right of access thereto for the purpose of using the same and keeping them in repair, shall not in any way be interrupted or obstructed by or in virtue of any licence or grant of Crown land made subsequent to the construction of such work.

Rights of  
floating timber  
and of  
passage  
preserved.

**79.** The free use, for the floating of saw logs and other timber rafts, and draws, of all streams and lakes that may be necessary for the descent of timber, and the right of access to such streams and lakes, and the passing and repassing on and along the land on either side thereof, whenever necessary for use thereof, and over all existing and necessary portage roads past any rapids or falls, or connecting such streams or lakes and over such roads, other than road allowances, as owing to natural obstacles may be necessary for the taking of timber or saw logs from lands, and the right of constructing slides where necessary, shall continue uninterrupted and shall not be affected or obstructed by or in virtue of any licence or grant of such lands, or by virtue of any licence to cut timber held by one person as against any other person holding a licence for the same purpose.

Prohibition  
against building  
of dams unless  
with permission  
of Lieutenant-  
Governor in  
Council.

**80.**—(1) No person shall construct or alter, or commence the construction or alteration of any dam for the diversion or storage of water in connection with the floating of logs or timber of any kind whatsoever unless he shall have received the prior approval in writing of the Lieutenant-Governor in Council.

(2) Every application for approval as aforesaid shall be accompanied by plans showing the location of the dam in relation to the surrounding land, and particulars of its length, height, and width, and of its type, and the material to be used therein, and such further plans and particulars as the Lieutenant-Governor in Council may require.

(3) Any such dam shall, if approved in accordance with the provisions of subsection (2) of this section be constructed or altered according to such plans and particulars as aforesaid and subject to such conditions as to construction or alteration as the Lieutenant-Governor in Council may stipulate in addition thereto or in lieu thereof.

(4) Notwithstanding anything to the contrary in this section contained in any case where it appears to the Lieutenant-Governor in Council or to any person thereunto authorized by him in writing that the urgency of the circumstances, or any other good and sufficient reason renders it desirable to do so, he may dispense with the requirements that plans and particulars shall be furnished by the applicant and may give his approval with or without conditions as to the construction or alteration of any such dam.

(5) Every person violating or failing to conform with any of the provisions of this section shall be guilty of an offence and shall, on summary conviction, be liable to a fine not exceeding four hundred dollars and in default of payment to imprisonment for a period not exceeding twelve months, and any court of summary jurisdiction may order any such person within such reasonable period of time as may be limited by such order to remove any such dam, or to repair or replace the same to the satisfaction of the Minister.

**81.** The owner, proprietor or manager of every pulp, paper or saw mill erected on or working near the margin of any of the public waters, bays, creeks or harbours of this province, shall take means to prevent the introduction into the said public waters, bays, creeks or harbours as aforesaid, of any noxious or deleterious substance, or any sawdust, or any refuse of saw mills, under a penalty for every offence of one hundred dollars, to be recovered in a summary manner before any stipendiary magistrate.

Pollution of  
public waters;  
penalty.

**82.** All timber cut under the provisions of a licence and upon which a royalty is payable under this Act or under any Act relating to Crown lands, shall be scaled by an authorized scaler before being manufactured. Any licensee who shall manufacture any timber upon which a royalty is payable without having

Scaling of  
timber.

the same first scaled by an authorized scaler shall be liable to a penalty not exceeding the value of the timber manufactured, to be recovered by action in the name of the Minister.

Authorization of scalers.

**83.** The Minister may authorize such persons as he deems fit to act as scalers for the purpose of this Act and may make such regulations as he deems necessary for the reception of reports and returns of such persons and the verification of the same.

Export of timber from ungranted land; penalty.

**84.**—(1) The Lieutenant-Governor in Council may grant to any person permission to export from Newfoundland lumber or unmanufactured products of timber from trees cut or taken on or from Crown lands, in such quantity and for such period and upon such terms and conditions of any kind as to the Lieutenant-Governor in Council may seem expedient.

(2) No person shall, except in accordance with subsection (1), export from Newfoundland any lumber or unmanufactured products of timber derived from trees cut or taken on or from Crown lands under a penalty of twenty dollars for every tree or part thereof or one hundred feet of lumber so exported, and the penalty may be recovered by suit in the name of the Minister.

Cutting of trees prohibited.

**85.** No person shall cut or remove any trees from Crown lands, except a maximum of two thousand cubic feet of timber cut for his own use, as firewood, in the fishery, in agriculture, or in other occupations of a similar kind, unless he has obtained a permit from the Minister issued in accordance with this Act and the regulations.

Permits to cut.

**86.** The Lieutenant-Governor in Council may make regulations empowering the Minister to issue permits to cut trees on Crown lands and remove them therefrom up to but not exceeding ten thousand cubic feet of timber, for such purposes and upon such terms and conditions as may be prescribed in the regulations, and any such regulations may be applied generally to the whole of the province or restricted to specified areas and may be varied in respect of different kinds of wood and in respect of different areas.

Special permits to cut.

**87.**—(1) The Minister may issue special permits to cut trees on Crown lands in such amounts and on such terms and condi-

tions for each such special permit as the Lieutenant-Governor in Council may approve.

(2) Where the Lieutenant-Governor in Council deems it desirable, tenders may be called for the purchase of any permit to be issued under subsection (1).

(3) Where tenders are called for under subsection (2), the Minister shall cause an advertisement of the proposed sale of the permit to be published in at least three issues of *The Newfoundland Gazette* and the advertisement shall contain a description of the area in respect of which the permit will be issued and of the terms and conditions which will be prescribed in the permit.

(4) Where tenders are called for under this section the Minister shall not be required to accept the highest bidder, but a permit shall not be awarded to any bidder other than the highest bidder without the approval of the Lieutenant-Governor in Council.

**88.**—(1) The Minister may grant to any person permission to export unmanufactured timber from any freehold land or from land under a licence to cut timber under this Act or any former Act, or from any land under demise from the Crown or from any specific part of any such land in such quantity and for such period and upon such terms and conditions of any kind as to the said Minister may seem expedient.

Permission to  
export  
unmanufactured  
timber from  
any lands;  
penalty.

(2) Save as hereinbefore provided no person shall (save under and to the quantity provided by any special Act or Acts permitting him so to do) take or carry away for exportation from any freehold land or from land under a licence to cut timber under this Act or any former Act, or from any land under demise from the Crown or from any part of any such land any trees or parts thereof, logs or timber unless and until the same have been manufactured into paper pulp, sawn lumber or other saleable products of timber, under a penalty of not less than twenty dollars for every tree or part thereof so taken and exported, the said penalty to be recovered by suit in the name of the Minister.

(3) Trees or timber cut into cordwood, pulpwood, pitprops or other lengths whether barked or not shall be held not to be saleable products of timber for the purpose of the last preceding subsection.

Purchase or acquisition of timber cut on Crown lands.

**89.** Subject to this Act no person may purchase or otherwise acquire timber cut on Crown lands except under a licence to be issued in accordance with this Act and the regulations: Provided that this section shall not apply to any person holding a valid Crown licence issued under The Saw Mills Act and purchasing or otherwise acquiring during the currency of the licence and in accordance therewith the quantity of timber therein authorized.

Licence to collect stumpage or royalty charge.

**90.** The holder of a licence to purchase timber who purchases or acquires timber cut on Crown lands shall as prescribed by the regulations collect all moneys due for stumpage or royalty charges on such timber from the person from whom he buys the timber and shall remit such moneys to the Minister.

Except with approval holders of timber lands not to cut or buy from Crown lands; penalty.

**91.—(1)** Except with the approval of the Lieutenant-Governor in Council, no person holding, under any Act or under any contract with the Government of Newfoundland or under any grant, lease or licence issued to him or to any other person under any Act or under any such contract, any beneficial interest in or upon lands for timber or pulp purposes or in or to any timber upon such lands, and no servant, agent, contractor or subcontractor of any such person shall cut timber on any Crown lands other than those in or upon which such beneficial interest is held, or shall purchase, acquire, or manufacture timber cut on any such Crown lands; and where any person holding any beneficial interest in any land or timber referred to in this subsection has a present or reversionary interest in any property or premises, neither he nor any other person shall use, in or upon such property or premises, any timber which was cut contrary to this subsection.

(2) Every person contravening any of the provisions of this section shall be liable upon summary conviction to a penalty of twenty dollars for every tree cut or log purchased, acquired, or manufactured, or for every one hundred feet board measure of manufactured timber purchased or acquired.

(3) Proceedings under this section may be taken by a constable, or member of the Forestry Division of the Department in the name of the Minister or in his own name.

(4) For the purposes of this section "timber" means round timber or logs and timber slabbed on one or more sides or manufactured into deals, planks, board, or clapboard.

(5) Nothing in this section shall operate to affect the provisions of the Lands Transfer and Licences Extension (Government and Bowater's) Agreement Act, 1947, dealing with the right of Bowater's Newfoundland Pulp and Paper Mills Limited to cut timber on lands exchanged under that Act.

**92.** The Lieutenant-Governor in Council may, when it shall be made to appear to him to be for the interest of the province by proclamation to be published in *The Newfoundland Gazette*, prohibit the rinding of growing or standing trees on the public lands of the province, or any portion of the same, or lands held under licence, lease or grant, for the purpose of taking away the rinds of the said trees for any purpose whatever, subject to a penalty of twenty dollars in respect of every tree so rinded to be recovered in a summary manner by any person who shall sue for the same.

Prohibition of rinding of trees; penalty.

**93.—(1)** The Lieutenant-Governor in Council may, if he deems it expedient, by proclamation published in *The Newfoundland Gazette*, reserve any area or areas of Crown land and prohibit the cutting of timber thereon for any purpose whatsoever or except for such purposes as may be set out in the proclamation, but the Minister may, if he deems fit, issue to an applicant therefor a permit to cut timber on any such area or areas subject to such terms and conditions as may be set out in the permit.

Reservation of areas from milling or cutting; notice, penalty.

(2) No reservation shall be made under this section until four weeks' public notice has been given in and near the locality in which the area proposed to be reserved is situate.

(3) The penalty for cutting timber in contravention of any of the provisions of any such proclamation or of the terms and conditions of any such permit shall be fixed and determined in the

proclamation, and the penalty may be recovered in a summary manner by action in the name of the Minister from the person cutting the timber or causing the timber to be cut or purchasing the timber when cut.

Proclamation of Forest Management Area.

**94.**—(1) Instead of making a reservation under Section 93, the Lieutenant-Governor in Council may, on submission by the Minister of a Forest Management Plan for any area of Crown lands the boundaries of which shall be defined in the submission, proclaim such area to be a Forest Management Area.

(2) Any area, reserved under Section 93 may be proclaimed a Forest Management Area under subsection (1).

(3) Every Proclamation made under subsection (1) shall be published in *The Newfoundland Gazette* and shall come into force on the date of such publication or on such later date as may be stated in the Proclamation.

Cutting prohibited in Forest Management Area, except under permit.

**95.** In any area proclaimed a Forest Management Area in accordance with this Act, no person shall, except under a permit referred to in Section 96, cut or transport wood of any kind for any purpose whatsoever.

Permits to cut in Forest Management Area.

**96.** The Minister may issue permits to cut timber in any Forest Management Area in accordance with this Act and the regulations and subject to such terms and conditions as the Lieutenant-Governor in Council may prescribe.

Holder of permit to carry out instructions.

**97.** The holder of a permit to cut or remove wood from a Forest Management Area shall carry out the instructions of the Minister or persons authorized by the Minister in regard to

- (a) the kinds and sizes of trees to be cut;
- (b) the amount of wood to be cut;
- (c) the place from which any kinds or sizes of trees shall be cut;
- (d) the manner in which trees shall be selected for cutting;

- (e) the time and manner in which wood shall be cut and transported within the Forest Management Area;
- (f) the carrying out of all other cutting and transportation operations in such manner as may be deemed necessary to conform with the Forest Management Plan.

**98.**—(1) The Lieutenant-Governor in Council may make regulations

Power to make regulations.

- (a) for controlling or regulating the cutting of timber on Crown lands;
- (b) for preventing wastage of timber cut on Crown lands; and to secure the utilization of all timber so cut;
- (c) for preventing the unnecessary destruction of timber on Crown lands and the origin and spread of fire;
- (d) for the general preservation and conservation of timber on Crown lands;
- (e) prescribing the terms and conditions under which trees may be cut on Crown lands;
- (f) prescribing the form, manner and time of the returns to be made by the holder of a permit to cut trees on Crown lands;
- (g) regulating the issuing of licences to purchase timber and the conditions under which the licences may be issued;
- (h) prescribing the accounts and records to be maintained by the holder of a licence to purchase timber;
- (i) prescribing the reports and returns to be made by the holder of a licence to purchase timber;
- (j) prescribing the manner in which the holder of a licence to purchase timber shall collect, account for and remit all moneys due as stumpage or royalty charges on timber cut on Crown lands;

(k) prescribing the receipts, documents and statements to be obtained from or given to the vendors of timber or both; and

(1) providing that no person who cuts timber on Crown lands whether under a licence, a permit or otherwise shall have any right of property in any such timber which has not been removed from Crown lands to a place under his control before the expiration of a period, not less than twelve months from the date of the cutting, to be prescribed in the regulations,

and such regulations may be made to apply generally or to any particular part of Newfoundland and different regulations may be made in respect of different parts of Newfoundland.

Publication.

(2) Regulations made under this section shall be published in *The Newfoundland Gazette* and such regulations shall come into effect as from the date of such publication or from such later date, if any, as may be fixed by the regulations.

Penalty.

(3) Every person who shall commit a breach of any of the regulations under this section shall be liable for each offence on a summary conviction to a fine not exceeding five hundred dollars and in default of payment to imprisonment for a period not exceeding three months.

#### PART IV.

##### MISCELLANEOUS PROVISIONS.

Utilization of all timber cut; disposal of slash; precautions against fire; penalty.

**99.**—(1) Every person cutting timber on Crown lands shall take from every tree he cuts down all the timber fit for use and use the same or manufacture the same into sawn lumber or some other saleable product, and shall dispose of the tops and branches and other debris of lumbering operations in such a way as to prevent as far as possible the danger of fire, in accordance with the directions of the proper officers of the Department. If after written notice from an Inspector his instructions as to the disposal of slash, tops, branches and other debris are not carried out within ten days from the date of such notice the Inspector shall give such person a further notice requiring him to cease all

lumbering operations in the locality in such further notice mentioned until the terms of the first mentioned notice have been carried out, and for every day or part thereof that such operations are continued after the delivery of the second notice and while the terms of the first notice are uncomplished with, such person shall be subject to a penalty of one hundred dollars to be recovered in a summary manner at the suit of the Inspector before a stipendiary magistrate. All such penalties shall be paid to the Minister for the use of the province.

(2) Every such person shall prevent all unnecessary destruction of growing timber on the part of his men and exercise strict and constant supervision to prevent the origin and spread of fire, and shall also comply with all regulations made in that respect by the Lieutenant-Governor in Council, and with all laws and regulations in that respect in force.

Offence.

**100.** Every person who cuts wood on Crown lands or who purchases or acquires timber, contrary to this Act or the regulation, is guilty of an offence and is where no other fine is specially provided by this Act liable on summary conviction to a fine not exceeding one thousand dollars or in default of payment of the fine to imprisonment for a period not exceeding twelve months; and on the conviction of any such person all wood cut on Crown lands or purchased or acquired in contravention of this Act or the regulations shall by the court of summary jurisdiction recording the conviction be declared forfeited to the Crown, and when so declared may be seized wherever found by any person authorized by the Minister, and if such wood cannot be found the value thereof may be recovered by the Minister from the person convicted as a civil debt.

**101.**—(1) Part I of The Crown Lands Act, 1930, as repealed by The Crown Lands (Mines and Quarries) Act, 1951, and The Crown Lands (Mines and Quarries) Act, 1951, are deemed to have applied to and in respect of the granting or leasing by the Crown for any purpose of any land comprised in any licence to cut timber as if such land was unoccupied Crown land, whether the licence commenced before or after the enactment of The Crown Lands Act, 1930, if by statute, or by an agreement the clauses and provisions of which by statute are declared to have the force and effect of law for all purposes as if expressly enacted

Granting and  
leasing of  
land com-  
prised in  
timber licences.

therein, it is provided that such licence shall be subject to the right of the Lieutenant-Governor in Council, the Governor in Council or the Governor in Commission to grant any of such land for that purpose, or if by the statute under which the licence was issued it was so provided when the licence was issued.

(2) Where before or after the enactment of this Act, a licence to cut timber was issued by the Crown by or under this or any other Act and by statut , or by an agreement the provisions of which by statute are declared to have the force and effect of law for all purposes as if expressly enacted therein, it is provided that the licence shall be subject to the right of the Lieutenant-Governor in Council, the Governor in Council or the Governor in Commission to grant or lease any of the land for any specified purpose, or by the statute under which the licence was issued it was so provided when the licence was issued, Part I of this Act and The Crown Lands (Mines and Quarries) Act, 1951, shall apply to and in respect of the granting or leasing by the Crown for any purpose whatsoever of any land comprised in the licence to cut timber as if such land was unoccupied Crown land, whether or not that purpose is one in respect of which a reservation to the Crown was made in the licence.

(3) A grant of land to which this section applies may be absolute if made after the timber has been cut therefrom and shall be exclusive of the trees and timber thereon if issued before the timber has been cut therefrom, but nothing in this section shall be construed as authorizing the granting of any land before the trees or timber thereon have been cut, if such land is comprised in a licence to cut timber to which the provisions of Clause 16 of the Agreement forming the Schedule to the Bowater's Newfoundland Act, 1938, applies.

Rights of way,  
etc., for mining  
purposes;  
arbitration.

**102.**—(1) Whenever the holder of a mining lease or grant or the holder of a licence to cut timber or the owner or lessee of a water power, or any person or corporation engaged in mining, lumbering or the manufacture of lumber or pulp shall be desirous of acquiring rights of way or other rights or easements over private property for tramways, transmission lines, roads or sites for wharves or piers for the purpose of or purposes incidental to the carrying on of his industry or undertaking and shall be unable to make an agreement with the owner of such property

for leave to enter thereon or for such rights of way or easements as shall be necessary as aforesaid and for the payment of compensation for any damage which may be occasioned to such property, it shall be lawful for the Lieutenant-Governor in Council to permit such rights to be acquired and the question of the necessity or expediency of the acquisition of such rights and of the amount of compensation, if any, to be awarded in respect of such damage shall be determined by arbitration.

(2) The arbitration shall be conducted as follows: The arbitrators shall be three, one person appointed by each of the contestant parties, the third arbitrator shall be the Minister, or some person appointed by writing under his hand, and the award of any two of the said arbitrators shall be final: Provided that either of the said parties may appeal therefrom to the Supreme Court, upon due notice to the opposite party within one month from the publication of the award.

**103.** Nothing in this Act contained shall be construed to affect the rights of persons holding grants, leases or licences issued before the passing of this Act. Such grants, leases and licences and rights thereunder shall continue in full force and effect as if this Act had not been passed, and in the case of mineral licences or mineral leases such rights may be implemented by the issue of mineral leases or mineral grants in fee simple as if the Act under which such licences or leases were issued had continued in force.

Titles heretofore issued not to be affected.

**104.** All mining locations heretofore laid off by the Minister as part of any mining section but which are not at any time after the passing of this Act held by any person under a valid licence or lease are hereby declared to be Crown land for the purposes of this Act, and as such shall be subject in all respects to the provisions of this Act.

Cancellation of vacant mining locations.

**105.** Copies of any records, plans, books or papers, belonging to or deposited in the Department, attested under the signature of the Minister, shall be competent evidence in all cases in which the original records, plans, books or papers would be in evidence.

Proof of records in Department of Mines, Agriculture and Resources.

Persons employed in Department not to receive grants, etc., except with consent.

**106.** Except with the consent of the Lieutenant-Governor in Council, no person employed with the Department or holding an office created by or continued under this Act shall acquire, either alone or with another, any grant, lease or licence under this Act, or hold any land so acquired.

BREEDING OF FISH, ANIMALS OR BIRDS.

Breeding of fish.

**107.**—(1) The Lieutenant-Governor in Council may, for the purpose of encouraging the breeding of fish in this province, lease to any applicant, for a term of years, after the applicant has given one month's notice in *The Newfoundland Gazette* and one other newspaper of his intention to apply for the same, the right to use any pond or river, and such quantity of land adjoining the same as may be necessary for such purposes, subject to such terms and conditions as may be deemed necessary.

Breeding of animals and birds.

(2) The Lieutenant-Governor in Council may for the purpose of encouraging the breeding of animals, including birds, lease to any applicant for a term of years, after the applicant has given one month's notice in *The Newfoundland Gazette* and one other newspaper of his intention to apply for the same, the right, whether exclusive or otherwise, to use any area or tract of Crown lands, whether wholly or in part covered with water or not, for the purpose of keeping and breeding fur or game animals or birds thereon, upon such terms and conditions, including conditions as to payment of rent or royalties, and subject to such reservations of rights to the public, as he may think fit; and may by such conditions vary the close seasons provided under The Wild Life Act or regulations for the time being in force, in respect of animals or birds, bred or taken within the land covered by any such lease.

Acquisition of rights for access to submarine mining location.

**108.** Whenever the holder of a lease or grant of a mining location which is covered by the sea or public tidal water is desirous of acquiring, for the purpose of working same, on private land adjacent to or in the neighbourhood of such mining location, any rights for the opening of tunnels or shafts or for the erection of buildings or machinery, or for the purpose of building and maintaining wharves or piers, or for building tramways or tracks to connect such tunnels or shafts with such piers or wharves, or shall be desirous of obtaining the right of continuing said

shafts and tunnels through any land or mining location, whether subterranean or submarine, and shall be unable to come to an agreement with the owner of such land or such mining location for the acquiring of such rights he may acquire the same, subject to the conditions hereinafter contained.

- (a) The holder of such lease or grant, who is in this section hereafter called the applicant, shall make application to the Lieutenant-Governor in Council for permission to acquire such lands or other rights hereinbefore mentioned. The application shall be in writing and shall contain a description of the areas held by the applicant, and the position of the same, the number and dimensions of the shafts, tunnels and other works, or for the protection thereof, the places from which such tunnels and shafts shall be driven or sunk, and the approximate course and direction thereof, and shall be accompanied by plans and profiles of the approximate location, courses and areas, and also state the general nature and extent of the rights, easements, privileges and powers which the applicant seeks to acquire or exercise or to have vested in him.
- (b) The Lieutenant-Governor in Council shall have the power to require any such further information or details as may seem desirable in reference to such application from the applicant or from the person over whose areas rights are applied for, and may grant or refuse such permission. In the event of granting the same, the Lieutenant-Governor in Council shall fix a time for the first sitting of the arbitration hereinafter mentioned to determine any matters of difference, and shall cause public notice of such permission being granted and of the time of the sitting of the arbitration to be published in *The Newfoundland Gazette*.
- (c) The applicant shall, within thirty days after the publication of such notice, serve the persons whose lands or mineral locations are affected by such application with a copy of his application to the Lieutenant-Governor in Council, and with notice of the deposit hereinafter mentioned.

- (d) The applicant shall, before serving the copy of his application as aforesaid, deposit with the Minister such a sum, to be fixed by the Lieutenant-Governor in Council, as will be sufficient to defray the expenses of the said arbitration.
- (e) The arbitration shall be conducted in accordance with the provisions of Section 102 hereof.

Arbitration  
therefor.

**109.** In the award the arbitrators or the umpire shall determine

- (a) whether the said lands, rights, privileges, easements or powers of any of them are necessary for the purposes of working the said mineral locations;
- (b) the conditions under which the same are acquired, as to the time of commencement and completion of each of the various works comprised in the application, and as to what distances from existing mines, buildings, works, ore bodies or mineral seams and their natural and necessary extensions, such works may be constructed, and in all cases providing that such ore bodies and mineral seams may not be entered, except that the right may be granted to the applicant to sink upon the land areas a vertical shaft through the ore seams and intervening strata, until the shaft shall reach the strata to be traversed;
- (c) the extent and nature of works to be provided and maintained by the applicant for the protection of the property and employees of the person whose lands or locations are affected;
- (d) the amount of compensation to be paid for such lands, rights, privileges, easements or powers;
- (e) the amount of a deposit to be made by the applicant as security for the payment of any judgment recovered against him by the said person whose lands and locations are affected as aforesaid, in respect of damage sustained by reason of the carrying out of the works or the

operations authorized by said award or by reason of the failure to comply with the conditions of the award, and in the event of the abandonment such damages may include moneys paid as costs or expenses in connection with such arbitration:

Provided that nothing in this section shall in any wise affect any existing agreement or confer any right to vary or alter any such agreement.

**110.** So much of The Judicature Act, as refers to arbitration, shall apply *mutatis mutandis* to arbitration under this Act.

Application of Judicature Act and arbitrations.

**111.** The deposit referred to in paragraph (e) of Section 109 shall be made with the Minister, and may be made in securities approved by him, and the depositor shall be entitled to receive the interest payable thereon. Such deposit shall remain as security until the expiry of one year from the completion of all the works authorized by the said award.

Deposit under Section 109 may be made in securities.

**112.** It shall be lawful for the person whose lands or locations are affected as aforesaid at all times during the progress of such work to enter upon and inspect all the lands and works which are the subject of such award and to report to the Government Engineer as to the state and condition of the same.

Inspection of works by person whose lands are affected.

#### CORRECTION OF DEEDS, FEES, ETC.

**113.** Whenever by reason of false survey or error any parcel of land contains less than the quantity of land mentioned in the grant, lease or license thereof, the Lieutenant-Governor in Council may order to be repaid to the person who is the owner of said land at the time of a claim under this section such part of the price or fee paid to the Crown for the said parcel of land as will bear to such price or fee the proportion that the quantity of land found to be deficient bears to the total quantity mentioned in the grant, lease or licence, but no such claim shall be entertained unless it be made within two years of the date of the grant, nor unless the deficiency be equal to one-tenth of the quantity described as granted.

Correction of errors in fees.

Correction of errors in case of inconsistent grants, etc.

**114.** In all cases in which grants, leases or licences have been issued for the same land inconsistent with each other through error, and in all cases of sales or appropriations of the same land inconsistent with each other, the Lieutenant-Governor in Council may in cases of sale cause a repayment of the purchase money, or when the land has passed from the original purchaser or has been improved before the discovery of the error or where the original grant, lease or licence, was a free grant, he may in substitution, assign land, or grant a certificate entitling the party to purchase Crown lands of such value and to such an extent as to the Lieutenant-Governor in Council may seem just and equitable under the circumstances; but no such claim shall be entertained unless it be preferred within one year from the discovery of the error.

Correction of clerical errors, etc.

**115.** Whenever a grant, lease or license has been issued to or in the name of the wrong party, or contains any clerical error, misnomer, or wrong or defective description of the land thereby intended to be granted, or there is in such grant, lease or licence, an omission of the conditions of the grant, lease or licence, the Minister may, (there being no adverse claim) direct the defective grant, lease or licence, to be cancelled and a correct one to be issued in its stead, which corrected grant, lease or licence, shall relate back to the date of the one so cancelled, and be of the same effect as if issued at the date of such cancelled grant, lease or licence.

Court may order delivery up of land wrongfully held over.

**116.** When any grantee, lessee, or licensee, or other person, refuses or neglects to deliver up possession of any land after forfeiture of the same under the provisions of this Act, or whenever any person is wrongfully in possession of Crown land, or having lawfully entered into possession or occupation thereof, has in any way forfeited his right to such possession or occupancy, and refuses to vacate or abandon possession of the same, the Minister may apply to a judge of the Supreme Court for, and such judge upon proof to his satisfaction that such land was so forfeited and should properly revert to the Crown, or that such person is wrongfully in possession of Crown lands, shall grant an order upon the grantee, lessee, or licensee, or person or persons in possession, to deliver up the same to the Crown; and such order shall have the same force as a writ of *habere facias possess-*

*ionem*, and the Sheriff shall execute the same in like manner as he would execute the said writ.

**117.**—(1) For the purpose of any proceeding at law by way of trespass or ejection by any person holding or entitled to any mines, minerals, timber, bog, water power or quarry rights, under any grant, lease or licence from the Crown (or as assignee of any grant, lease or licence) such person shall be held to have an interest in the subject matter of such grant, lease or licence.

Rights of holders of grants, etc., and of Minister for purposes of proceedings at law.

(2) For the purposes of any proceeding under Sections 141 to 148 of The Judicature Act, the Minister shall be deemed to be a person having an interest in all lands or tenements in this province held under Crown grants, so as to enable him to present a petition under the said sections against the holder of any Crown grant which he may claim ought to be set aside or otherwise dealt with as provided in the said sections.

**118.**—(1) No grant, lease or licence shall issue but on the payment of a sum of not less than one dollar for the document of title.

Fee on issue of documents; payment of fees in cash.

(2) All fees, prices, rentals, royalties or other payments payable in respect of leases, licences and grants or otherwise under the provisions of this Act shall be paid in cash to the Department.

**119.** No grant or lease shall issue to any person, in respect of which any price or rental is payable under this Act, until such price or rental be paid in full, unless in this Act otherwise provided.

Grant or lease not to issue until fees paid.

**120.** Notwithstanding any other law to the contrary, a grant, lease, licence or permit under this Act shall not become effective until delivery in fact into the hands of the grantee, lessee, licensee or permittee, or into the hands of some person for or on behalf of the grantee, lessee, licensee or permittee, is made, notwithstanding that such grant, lease, licence or permit has been signed by the Lieutenant-Governor under the Great Seal of the province or by the Minister, and until such delivery in fact the grant, lease, licence or permit may be cancelled, amended or otherwise dealt with.

Grant, lease etc., not effective until delivery in fact.

Certain acts  
or omissions  
not to be  
construed  
as waiver.

**121.** All of the provisions of this or any other Act for reversion to and reversion in the Crown or any Minister of the Crown of any lands and any rights whatsoever now or hereafter vested or existing conferred at any time before or after the enactment of this section by grant, lease, licence or permit, or by any other method whatsoever under this or any other Act shall have effect, notwithstanding any acceptance of rent or other moneys whatsoever by or on behalf of the Crown or any Minister of the Crown in respect of such lands or rights, and notwithstanding any other act or omission which might be construed as a waiver of any term, condition, covenant, agreement or right of forfeiture, except a waiver in writing conveyed to the holder of the lands or rights by the express authority of the Lieutenant-Governor in Council.

Regulations.

**122.** For the purpose of carrying into effect the provisions of this Act, the Lieutenant-Governor in Council may make such regulations as, in his opinion, are necessary or desirable for carrying out the spirit, intent and meaning of this Act in relation to all matters for which no express provision is made or in respect of which only partial or imperfect provision is made, and without limiting the generality of the foregoing, may make regulations

- (a) prescribing the fees to be paid under this Act;
- (b) prescribing the forms of and modes of application for licences, permits, leases and grants issued under this Act, if no express provision for such prescription is made elsewhere in this Act;
- (c) prescribing the standards for dwelling houses required to be erected on land leased under subsection (1) of Section 5; and
- (d) prescribing the method of surveying lands in respect of which applications are made under this Act, the duties of the surveyor with respect to the conduct of the survey and any other matter relating to the survey.

**123.** Notwithstanding anything to the contrary contained in this Act or any other Act or law or the Constitution of the province, where it is provided in this Act that the Minister may issue any grant, lease, licence, permit or other instrument, the Minister may execute it by subscribing his signature thereon and affixing the seal of the Department thereto and may at any time thereafter deliver such grant, lease, licence, permit or other instrument, and for the purposes of such execution and delivery, the signature of the Lieutenant-Governor shall not be required thereon, nor shall it be necessary to pass such grant, lease, licence, permit or other instrument under the Great Seal of the province.

Execution and delivery of documents by Minister.

**124.**—(1) All applications for leases, licences or grants in respect of which no provision is specifically made in this Act shall be made by petition to the Lieutenant-Governor in Council.

Application to be by petition; inspection of records.

(2) Records of all applications and duplicates of all leases, licences or grants shall be kept and recorded at the Department and all such records shall be open to the inspection of the public during the hours mentioned in Section 136 on the payment of a prescribed fee.

**125.** The Minister shall every year furnish to the Lieutenant-Governor in Council, for the purpose of being laid before the Legislature, a detailed return of licences, leases and grants, of all mineral, agricultural, timber and other lands, and of all water rights, issued within the year ending the last of March then last past, of all money received for the same, the names of the licensees, lessees and grantees, with the date of and expenses incurred in and about the same.

Annual report of Minister.

**126.**—(1) It is lawful for any person authorized thereunto by the Minister

Entry on land to install control survey markers.

(a) to enter upon any land in the province for the purpose of installing; and

(b) to install

control survey markers.

Entry on land by a surveyor to make certain observations.

(2) It is lawful for any surveyor, when engaged in the performance of his duties as a surveyor,

- (a) to enter upon any land in the province for the purpose of making observations to or from any control survey marker; and
- (b) to install on the land so entered any temporary survey markers he deems necessary for his purpose on any traverse from a control survey marker, provided that such temporary survey markers shall be removed immediately upon completion of the work upon which the surveyor is engaged.

Surveyor has right of passage.

(3) It is lawful for any surveyor, when engaged in the performance of his duties as a surveyor, to pass over, measure along and ascertain the bearings of any section line or government line, and, for such purposes, to pass over any land in the province.

Fire precautions and restoration of land.

(4) Any

- (a) person acting under the provisions of subsection (1); or
- (b) surveyor acting under the provisions of subsection (2) or (3)

shall

- (c) exercise reasonable precautions to prevent fires; and
- (d) restore all land concerned, as nearly as reasonably may be, to the condition existing before he acted under the provisions of subsection (1), (2) or (3), as the case may be.

Compensation.

(5) Any

- (a) person acting under the provisions of subsection (1); or
- (b) surveyor acting under the provisions of subsection (2) or (3)

shall be liable to pay compensation for any injury or damage caused by him while so acting.

(6) The amount of the compensation payable under subsection (5) may, in default of agreement between the parties, be fixed by a judge who may also determine the time and the manner of payment.

Fixing of amount of compensation.

(7) Any party who desires to have the amount of the compensation fixed by a judge under subsection (6) may apply to the judge and before doing so he shall give to all interested persons ten days' notice in writing of his application or such longer period of notice as the judge may order.

Notice of application.

(8) Subject to subsection (9), an order of a judge made under subsection (6) is final and binding upon all the parties.

Order re compensation.

(9) Where the amount of compensation fixed under subsection (6) exceeds one thousand dollars, either party may appeal to the Court from the order of the judge.

Appeal.

(10) A judge before whom a proceeding is taken under subsection (6) may order any person from whom the compensation is claimed to give security for the payment of any amount which may be fixed and may pending the termination of the proceeding prohibit such person from further acting under the provisions of subsection (1), (2) or (3), as the case may be.

Security.

(11) Any

(a) person who intends under the provisions of subsection (1); or

(b) surveyor who intends under the provisions of subsection (2) or (3)

Notice before entry on private land.

to enter upon any private land which is occupied, shall deliver to the occupier thereof, whether or not he is the owner of the land, if he lives on any part of the land or is known and available and can easily be contacted, written notice of his authority to enter and what he intends to do thereon.

Molesting of surveyors or removal of marks; penalty.

**127.** Any person who shall interrupt, molest or hinder a surveyor while in the discharge of his duties, or shall knowingly or wilfully pull down, deface, alter, or remove any mound, post, monument or control survey marker erected, planted or placed in any survey under the provisions of this Act or under the authority of any Order in Council, shall, on conviction in a summary manner before a stipendiary magistrate, be liable to a fine not exceeding twenty-five dollars or imprisonment for a period not exceeding three months, without prejudice to any civil remedy which any surveyor or any other party may have against the offender.

Report to be made by surveyor before lease or grant issued.

**128.** No lease or grant shall be issued unless a surveyor has reported to the Minister that he made careful enquiry in the locality of the land and did not find an adverse claim or other reason why the land should not be leased or granted to the applicant.

Reservation of public right of way around waters.

**129.** In all grants, leases and licences issued under this Act and all transfers made under Section 133 a strip of Crown lands not less than thirty-three feet wide around and adjoining all lakes and ponds and along each bank of all rivers shall be reserved.

Interpretation.

**130.—(1)** In this section

- (a) “permit” means a permit issued by the Minister under this section;
- (b) “regulations” means regulations made under this section;
- (c) “trees” includes shrubs.

Protection of trees growing within three hundred and thirty-three feet of the centre line of a highway.

(2) Notwithstanding anything in this Act or any other statute or law and subject to this section and the regulations, if any, no person shall cut down, uproot or in any other way destroy any trees within three hundred and thirty-three feet of the centre line of the travelled portion of a highway as defined in The Department of Highways Act.

Regulations.

(3) The Lieutenant-Governor in Council may make regulations to control and regulate the cutting of trees referred to in

subsection (2) and may make different regulations in respect of different species of trees or in respect of the same species of trees in different circumstances and regulations may be made so as to apply generally or to any particular part of Newfoundland or different regulations may be made in respect of different parts of Newfoundland.

(4) In any case in which he deems it expedient the Minister may, by a permit in writing, authorize any person to cut down, uproot or otherwise destroy trees referred to in subsection (2) subject to the regulations and to such terms and conditions, if any, not inconsistent with the regulations as he may prescribe in the permit or to which the permit may be made subject. Permit.

(5) If the holder of a permit commits a breach of any of the terms or conditions referred to in subsection (4) or of the regulations the Minister may cancel the permit and in addition the holder of the permit is liable to the same penalty as for a breach of subsection (2). Breach of permit or regulations.

(6) Every person who contravenes this section or the regulations is guilty of an offence and is liable on summary conviction, in the case of a first offence, to a fine not exceeding one hundred dollars, and, in the case of a second or subsequent similar offence, to a fine not exceeding two hundred dollars and in either case in default of payment to imprisonment for a term not exceeding three months. Penalty.

(7) Trees referred to in subsection (2) which are cut down, uprooted or otherwise destroyed Forfeiture.

(a) except in accordance with this section and the regulations and the terms and conditions referred to in subsection (4); or

(b) in accordance with this section and the regulations and the terms and conditions prescribed in a permit and not removed within a period of twelve months after they are cut down, uprooted or otherwise destroyed

are vested in the Crown,

No compensation payable.

(8) No compensation is payable to any person in respect of trees vested in the Crown in accordance with subsection (7).

Trees cut on private fenced land.

(9) This section does not apply in respect of trees cut down, uprooted or otherwise destroyed with the consent of the owner on privately owned land which is enclosed by a fence.

Construction, alteration or replacement of dams.

**131.**—(1) Subject to Sections 51 and 80, no person shall construct, alter, or replace, or commence the construction, alteration or replacement of any dam or carry out any other work for the diversion or storage of water or the alteration of the natural flow or rate of flow of any stream, lake or waterway except with the prior approval in writing of the Lieutenant-Governor in Council.

Application for approval to construct, alter, or replace dams.

(2) Any person seeking the approval of the Lieutenant-Governor in Council to carry out any work referred to in subsection (1) shall submit to the Minister a written application in which he shall

- (a) set out the work that he proposes to carry out;
- (b) indicate the stream, lake or waterway in respect of which he proposes to carry out the work;
- (c) indicate the Crown lands, if any, which he requires for the purpose of carrying out the work and show that those lands are reasonably required for that purpose and that any grant, lease or licence of or to use those lands is not calculated to cause undue injury to the rights of others;
- (d) show that there is no adverse claim or other reason why the grant, lease or licence should not be issued;
- (e) furnish such other information as the Minister may require.

Approval of Lieutenant-Governor in Council.

(3) The Lieutenant-Governor in Council may approve the carrying out of any of the work referred to in subsection (1) and may

(a) attach to the approval such conditions as he deems fit; and

(b) by grant, lease or licence vest in the person referred to in subsection (2) any Crown lands, whether adjoining or under the stream, lake or waterway in respect of which the application was made under subsection (2).

(4) The Lieutenant-Governor in Council may, on six months' notice without cause, or without notice where the person to whom approval has been given under subsection (3) has violated or failed to comply with any of the conditions attached to the approval under paragraph (a) of that subsection

Order for removal or repair of dam.

(a) order that person to remove any dam referred to in this section within such time as the Lieutenant-Governor in Council may prescribe in the order and to restore the stream, lake or waterway and the land adjoining or under it as nearly as possible to the condition it was in before the dam was constructed; or

(b) order that alterations or repairs in the dam be made in accordance with the order and that if those alterations or repairs are not carried out within the time, if any, specified in the order, the dam shall be removed.

(5) If a person to whom an order has been directed under subsection (4) fails to carry out that order within the time, if any, prescribed in the order, or if he cannot be found, the Minister may cause the order to be carried out and may recover the cost thereof from that person as a debt due Her Majesty.

Minister may carry out order.

(6) Where the Lieutenant-Governor in Council makes an order under paragraph (a) of subsection (4) or causes an order to be carried out under subsection (5) he may by order cancel any grant, lease or licence issued under subsection (3) and from the date of the order the grant, lease or licence shall cease and determine to the same effect as if it had never been issued and any property belonging to the grantee, lessee or licensee which is on the land, if not removed within one month after the date of the order, belongs to the Crown.

Cancellation of grant, lease or licence.

All holders of land to keep land fenced or otherwise marked.

**132.**—(1) Subject to this Act, all holders of lands whether or not the lands are held under an assurance from the Crown shall, at all times, either keep up a fence, or keep good and substantial posts, mounds or monuments at all corners and angles of the land held by them and keep the boundary lines through the woods connecting all such corners and angles open and clear to a width of at least three feet; and the absence of a fence, and of the posts, mounds, monuments and lines or any of them shall, subject to any existing law relating to trespass by cattle, be a good defence in any action of trespass brought or taken by any such holder.

(2) The Minister may order a survey of any of the lands referred to in subsection (1) whenever he is satisfied that the fences, posts, mounds or monuments or boundary lines, which marked the boundaries of the original survey of any such lands are no longer in existence, or whenever in his opinion it is necessary or desirable to make a survey.

(3) Whenever, in the opinion of the Minister, a survey under subsection (2) is necessary because of the failure of a holder to comply with subsection (1), the Minister may require the holder to bear the cost of that survey, and may sue for it as if it was a civil debt due by the holder.

Transfer of administration and control of Crown lands to specific Ministers.

**133.** The Lieutenant-Governor in Council may, by order, transfer, either forever or for any lesser term, to any Minister of the Crown specified in the order, the administration and control of the entire or any lesser interest of Her Majesty in right of the province in any Crown lands, and the transfer may be made subject to any conditions, restrictions or limitations that the Lieutenant-Governor in Council considers advisable.

Offence.

**134.** Any person who, except in accordance with this Act, encloses, marks off, or takes possession of any Crown lands is guilty of an offence and upon a complaint laid with the consent of the Minister is liable on summary conviction to a fine of not less than the aggregate of fifty dollars for every acre so enclosed, marked off or taken into possession.

**135.** In any case where no other penalty is specifically provided, any person committing an offence against any of the provisions of this Act shall be liable to a penalty not exceeding fifty dollars, to be recovered summarily.

Penalties where not otherwise specifically provided.

**136.** The hours during which any application, record or instrument shall be received at the Department shall be from nine-thirty a.m., to one p.m., and from two-thirty p.m., to four-thirty p.m., on business days.

Hours of opening of Department.





## CHAPTER 72

### An Act to Revise and Consolidate the Law Relating to Mines and Quarries.

- 1.** This Act may be cited as The Crown Lands (Mines and Quarries) Act and shall be read with The Crown Lands Act, but where this Act conflicts with that Act this Act shall prevail. Short title.
- 2.**—(1) Subject to Section 1 and subsection (2) of this section, all of the provisions of The Crown Lands Act apply to every permit, licence and lease issued under this Act and to every mining grant, lease and licence issued under any earlier statute. Provisions of The Crown Lands Act made applicable.
- (2) Nothing in subsection (1) shall be deemed to affect the rights of any person under a grant, lease or licence issued under any earlier statute. Saving.
- 3.** In this Act and in any regulations or orders made thereunder unless the context otherwise requires Interpretation.
- (a) “court” means the Supreme Court of Newfoundland;
  - (b) “Crown lands” means all lands within the Province of Newfoundland, except those which may be in the use or occupation of any Department of the Government of Newfoundland or of any officer or servant thereof as such, and those lands which may before the enactment of this Act have been lawfully set apart or appropriated for any public purpose and lands lawfully alienated from the Crown;
  - (c) “Department” means the Department of Mines, Agriculture and Resources;
  - (d) “development licence” means a development licence issued under Section 57;

- (e) “judge” means a judge of the court, or the court where a matter has been moved into court by the judge or ordered by him to be the subject of an action in court;
- (f) “mine” means any working for the extraction of minerals, coal, oil, natural gas or salt and includes an oil well;
- (g) “minerals” means any naturally occurring inorganic substance but does not include quarry materials, coal, oil, natural gas or salt;
- (h) “Minister” means the Minister of Mines, Agriculture and Resources;
- (i) “permit holder” means the holder of a valid miner’s permit issued under Section 4;
- (j) “prescribed” means prescribed by this Act or the regulations or by any order or rule made under this Act;
- (k) “quarry” means a working used for the purpose of extracting quarry materials;
- (l) “quarry materials” means limestone, granite, slate, marble, gypsum, peat, marl, clay, sand, gravel, any building stone and volcanic ash;
- (m) “regulations” means regulations made under this Act;
- (n) “surface rights” means land lawfully held by any person other than the Crown where the minerals, quarry materials, coal, oil, natural gas, or salt thereon, therein, or thereunder are reserved to the Crown;
- (o) “surveyor” means, notwithstanding anything in this Act, a surveyor who is a registered member of the Association of Land Surveyors created by The Land Surveyors Act or a surveyor, not so being a member, who can lawfully be employed to make the survey in question.

**4.**—(1) Subject to subsection (2), the Minister may issue a miner's permit in a form to be prescribed by him

Miner's permit.

- (a) to any person of the full age of eighteen years on the payment by that person of a fee of ten dollars;
- (b) to any company incorporated under the laws of Newfoundland on the payment by that company of a fee of twenty-five dollars; or
- (c) to any company incorporated in Canada other than a company described in paragraph (b) on the payment of a fee of fifty dollars,

and a permit issued under this section is valid from the date of issue to and including the thirty-first day of December next following.

(2) When a miner's permit is issued to an incorporated company after the first day of October in any year, the fee to be paid by the company in respect of the permit shall be one-half of the amount prescribed in subsection (1) for that company.

Fee for permit issued after October 1st.

**5.** A permit holder may, subject to this Act, search and prospect for minerals, coal, oil, natural gas and salt in and upon

Right to prospect.

- (a) all Crown lands in Newfoundland; and
- (b) any surface rights, with the consent of the owner or lessee thereof, if the minerals, coal, oil, natural gas or salt, as the case may be, thereon, therein or thereunder which is reserved to the Crown is not staked out as a mining claim or withdrawn or reserved for prospecting or staking out in accordance with this Act,

but rights in respect of coal, oil, natural gas or salt may not be obtained except under the provisions of this Act relating to a boring permit and a lease in respect of those substances.

**6.** A permit holder may explore, whether by surface or subterranean prospecting or excavation, any of the lands which he is, under Section 5, entitled to search and prospect if the ex-

Manner of prospecting.

ploration is done with a view to obtaining a mining lease in accordance with this Act, but he shall not remove or take away from any of the lands any greater quantity of minerals than is necessary for his use as samples.

Right of  
permit holder  
to stake claims.

**7.** Subject to this Act, a permit holder may, for himself or for any other permit holder, stake out a mining claim on any of the lands referred to in Section 5 and may work the claim or transfer his interest therein to any person, but he shall pay any compensation payable in respect of surface rights under Section 54.

No staking out  
on certain  
lands.

**8.** No person shall, except with the consent in writing of the Lieutenant-Governor in Council and subject to such terms as to him may seem just, stake out a mining claim upon lands

- (a) reserved or set apart as a town site by the Crown in right of Newfoundland;
- (b) granted to any person to be laid out as a town site and actually laid out as such;
- (c) occupied by any Department of the Government; or
- (d) held or used for any public purpose.

Restriction  
on prospecting  
on improved  
lands.

**9.** No person shall, even where the mines or minerals thereon, therein or thereunder are reserved to the Crown, search or prospect for minerals on any land used as a garden, orchard, nursery, plantation, or pleasure ground, or whereon crops are growing which may be damaged by the searching or prospecting, or on or under that part of any land upon which any spring, reservoir, dam, water works, dwelling house, outhouse, manufactory or other building or any cemetery is situated, except with the consent in writing of the owner of the land, or upon an order in that behalf made by the Lieutenant-Governor in Council which may contain such terms as to him may seem fit.

Miner's permit  
does not  
give exclusive  
right to  
prospect.

**10.** A person does not acquire an exclusive right to search, prospect, explore or excavate on, in or under any lands until he has acquired that right by complying with all the requirements of this Act relating thereto.

11.—(1) The Lieutenant-Governor in Council may by notice published in *The Newfoundland Gazette* and in one or more issues of a newspaper published and circulating in the province reserve from the operation of this Act from such date as may be stated in the notice all minerals, quarry materials, coal, oil, natural gas and salt or any particular kind or class thereof,

Reservation of particular kinds or classes of minerals, etc., from operation of this Act.

- (a) which are situated in any area of land in Newfoundland or in the whole of Newfoundland;
- (b) which are not held by any person under an existing licence, lease or grant; and
- (c) in respect of which no application to record is lawfully filed before the date on which the reservation is to take effect.

(2) When a reservation is made under subsection (1) the Lieutenant-Governor in Council may

Lieutenant-Governor in Council may grant rights respecting reserved areas.

- (a) grant to a permit holder the exclusive right to explore, search and prospect for minerals, quarry materials, coal, oil, natural gas or salt or any of them on, in or under the whole or any part or parts of the area so reserved; and
- (b) prescribe the terms and conditions upon which any minerals or other substances referred to in paragraph (a) or any of them found in consequence of an exclusive right given under that paragraph may be sold, leased or otherwise disposed of either generally or to some designated person; or
- (c) direct that the minerals or other substances referred to in paragraph (a) or any of them found on, in or under any area reserved under subsection (1) may be prospected for or by and on behalf of the Crown in accordance with such terms and conditions as he may prescribe.

(3) The Lieutenant-Governor in Council may by notice published in *The Newfoundland Gazette* and in one or more issues

Rescission of reservations.

of a newspaper published and circulating in the province, rescind, in whole or in part, a reservation made under this section or a similar reservation made under any Act or law before the date of the enactment of this Act, and the notice shall fix a date, not sooner than thirty days after the publication thereof, on which the rescission shall come into force, but the rescission shall not affect anything validly done before the rescission comes into force.

Obligation of Crown officers to stake out claims for the Crown.

**12.**—(1) A person who, while acting in the course of his duties as an officer of the Crown or in assisting an officer of the Crown, makes a discovery of any minerals, coal, oil, natural gas or salt upon land open to searching and prospecting and staking out as a mining claim shall stake out and record a mining claim for the Crown.

Procedure in staking out claims for the Crown.

(2) A person staking out a mining claim under subsection (1) shall proceed in the manner provided in Section 15 for the staking out of claims, and in addition he shall note on the No. 1 post the words "staked out for the Crown" and shall, within the time limited by this Act for recording claims, notify the Minister of the staking out giving the date of the staking out and a description of the property.

Protection and recording of mining claims staked out for the Crown.

**13.** When a claim is staked out for the Crown under Section 12 the parcel of land covered by the claim shall not be open to staking out by any other person and the Minister shall, upon receiving the notice to be given under subsection (2) of that section, cause a note to be entered in the records of the Department stating that the land was staked out for the Crown and shall cause the claim to be marked with the letter "C" upon the map at the Department kept for the purpose of recording mining claims, and thereafter the claim shall be dealt with or disposed of in such manner as the Lieutenant-Governor in Council may direct.

Extent and measurement of mining claim.

**14.** A mining claim shall be a square of forty acres, being one thousand three hundred and twenty feet on each side, and the claim shall be laid out with boundary lines running north, south, east and west magnetically, and the measurements shall be horizontal and the boundaries shall be deemed to extend downwards vertically on all sides.

- 15.—(1) A permit holder may stake out a mining claim by Manner of  
staking out  
claims.
- (a) planting or erecting a post at each of the four corners of the claim and marking that at the northeast corner No. 1, that at the southeast corner No. 2, that at the southwest corner No. 3 and that at the northwest corner No. 4 so that the number is on the side of each post facing towards the post next following it in the order stated in this paragraph;
  - (b) writing or placing on No. 1 post
    - (i) the name of the permit holder staking out the claim,
    - (ii) the number of the permit of the permit holder staking out the claim,
    - (iii) the date and hour when the claim was staked out, and
    - (iv) if the claim is staked out for another permit holder, the name of that permit holder and the number of his permit;
  - (c) writing or placing on No. 2, No. 3 and No. 4 posts
    - (i) the name of the permit holder staking out the claim, and
    - (ii) if the claim is staked for another permit holder, the name of that permit holder; and
  - (d) plainly blazing the trees on two sides only where there are standing trees and cutting the underbrush along the boundary lines of the claim, and where there are no standing trees clearly indicating the outline of the claim by planting thereon at intervals not exceeding one hundred and thirty-two feet durable pickets not less than five feet high, or by erecting thereon at such intervals monuments of earth or rock not less than two feet in diameter at the base and at least two feet high so that the lines can be distinctly seen.

Posts to be used in staking out claims.

(2) Every post referred to in paragraph (a) of subsection (1) shall stand at least four feet above the ground and shall be squared or faced on four sides for a distance not less than one foot from the top and the squared or faced part of the post shall be not less than four inches in width.

Use of tree or stump as post.

(3) A standing tree or stump may be used as a post for the purposes of paragraph (a) of subsection (1) if it is cut off above the height stated in and squared or faced in accordance with subsection (2), and whenever a tree or stump is so used the centre of the tree or stump where it enters the ground shall, for the purposes of any survey made under this Act, be taken as the point to or from which any measurement is to be made.

Staking out of claims in continuous block.

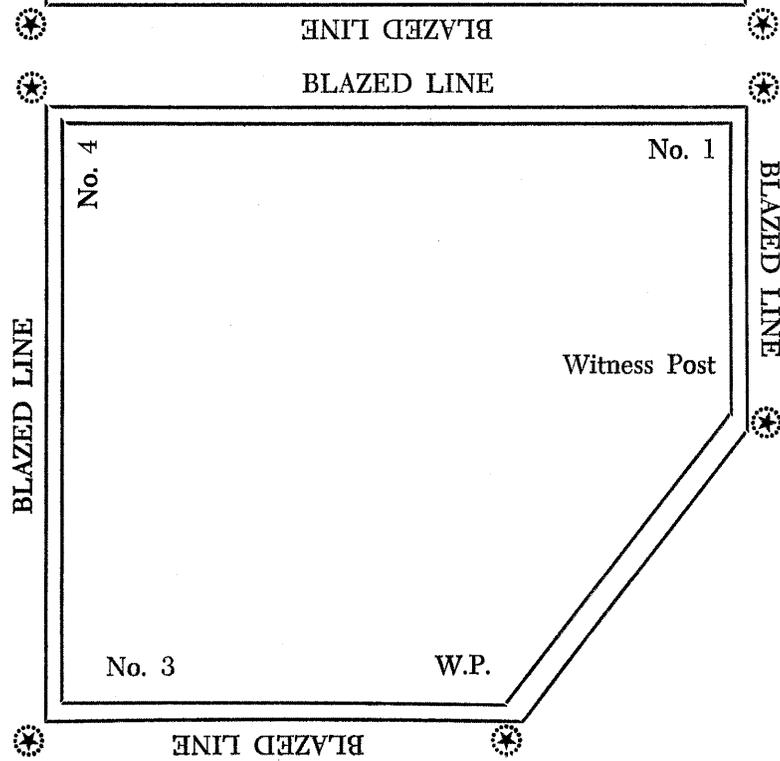
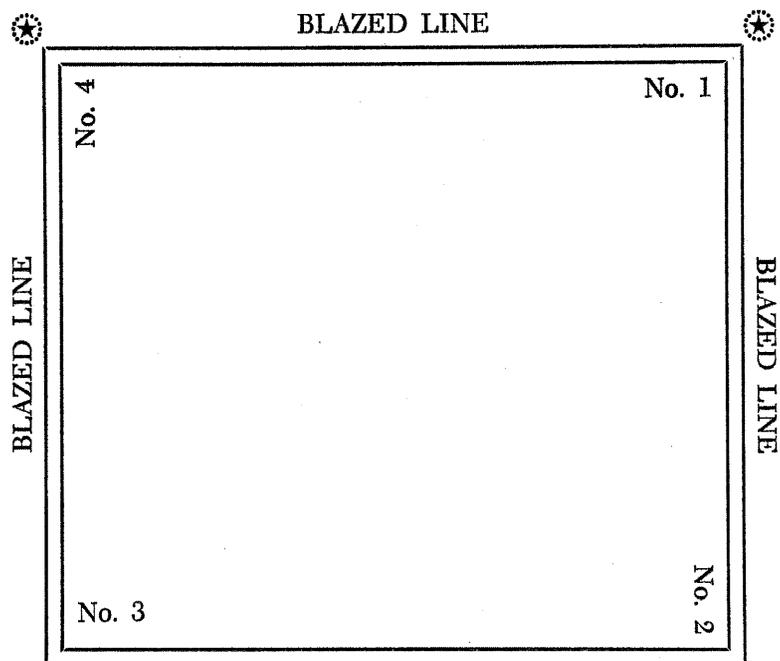
(4) Where a permit holder stakes out two or more claims forming a continuous block, he may fulfil the requirements of paragraph (d) of subsection (1) by marking the outside boundary lines of the block in the manner described in that paragraph without marking the internal lines which separate the claims forming the block, but this subsection does not apply to the requirements contained in paragraphs (a), (b) and (c) of subsection (1).

Witness posts.

(5) Where at a corner of a claim the nature or conformation of the ground renders the planting or erecting of a post impracticable, that corner may be indicated by planting or erecting at the nearest practicable point a witness post bearing the same markings as that prescribed by this section for the corner post at that corner together with the letters "W.P." and an indication of the direction and distance of the site of the true corner from the witness post.

Manner of staking out claim illustrated.

(6) The manner of staking out a claim under this section is illustrated by the following diagrams:



Staking out  
irregular land.

(7) An irregular portion of land having any boundary lying along land not open for staking out or water may be staked out with that boundary coterminous with that land or water, but the claim shall be made to conform as nearly as possible with the manner of staking out described in this section and shall not exceed the area stated in Section 14.

Improper  
staking  
prohibited.

**16.—(1)** No person shall for any purpose

- (a) stake out either wholly or partially or cause or procure to be staked out a mining claim upon any lands where the staking out is not authorized by this Act; or
- (b) having properly staked out or caused or procured to be staked out a mining claim neglect or fail to record the mining claim in accordance with this Act.

Staking out  
of claim after  
contravention of  
subsection (1).

(2) Any person who contravenes subsection (1) is not liable to the penalty provided by Section 92, but may not thereafter stake out a mining claim on the lands in respect of which the contravention was committed or on any part thereof or record a mining claim thereon unless he

- (a) notifies the Minister in writing of the contravention;
- (b) files in the Department an affidavit satisfactory to the Minister showing that in respect of the contravention he acted in good faith and for no improper purpose; and
- (c) obtains a certificate issued by the Minister under subsection (3).

Minister  
may issue  
certificate  
entitling  
violator to  
stake claim.

(3) Where the Minister is satisfied that any person who contravened subsection (1) acted in good faith and for no improper purpose he may, upon the payment to the Department of a fee of twenty dollars for every mining claim in respect of which a contravention was committed by that person, issue to him a certificate stating that, subject to this Act, he is entitled to stake out a mining claim on the land concerned.

(4) The Minister shall cause to be kept in the Department a record of every certificate issued under subsection (3) and the date of its issue.

Record of certificates.

**17.** A person who removes, destroys or defaces a stake planted by himself or another in accordance with this Act, or alters, defaces or obliterates the boundaries of any mining claim or any part thereof staked out by another person in accordance with this Act is guilty of an offence and liable, on summary conviction, to a penalty not exceeding one hundred dollars and in default of payment of the penalty to imprisonment for a period not exceeding three months, or to both fine and imprisonment; and in addition to the penalty the person injured may, before the court imposing the penalty or before any other court having jurisdiction to deal with the matter, recover from the person committing a breach of this section, as a civil debt, the cost of repairing the damage or injury.

Offence and penalty; damages.

**18.** A compliance with the requirements of this Act, relating to the staking out of a mining claim, which is such substantial and reasonable compliance as the circumstances will permit shall be deemed to be sufficient.

Reasonable compliance with requirements as to staking out deemed to be sufficient.

**19.—(1)** A permit holder who has staked out a mining claim or one on whose behalf a mining claim was staked out shall, within thirty days after the staking out where the staking out was done in the Island of Newfoundland, and within sixty days after the staking out where it was done in that part of Labrador to which this Act applies, deliver or cause to be delivered to the Department

Application to record a mining claim.

- (a) an application to record the mining claim showing
  - (i) the name of the permit holder by or for whom the application is made,
  - (ii) the locality of the mining claim indicated by a general description containing at least two bearings or a bearing and a measurement to some prominent natural feature or features which are identifiable from vertical aerial photographs of the vicinity,

- (iii) the length and bearings of the boundaries and, if for any reason the boundaries are not regular, the nature of that reason, and
  - (iv) the day and hour when the claim was staked out and the date of the application;
- (b) a sketch or plan showing the corner posts and the witness posts, if any, and the distance separating them stated in feet; and
- (c) an affidavit satisfactory to the Minister made by the permit holder who staked out the mining claim, stating
- (i) the date of the staking out,
  - (ii) that the distances and bearings referred to in paragraph (a) and those given in the sketch or plan referred to in paragraph (b) are given with such accuracy as can reasonably be attained,
  - (iii) that all other statements and particulars set forth, delineated and shown in the application and the sketch or plan are true and correct,
  - (iv) that at the time of the staking out there was nothing upon the land where the staking out was done to indicate that it was not open for staking out as a mining claim,
  - (v) that the deponent verily believes that the land was open for staking out and that the staking out was authorized by this Act and should be recorded, and
  - (vi) that there are upon the land no buildings, clearings or improvements for farming or for any other purpose other than those set forth in the affidavit.

Fees.

(2) The permit holder shall, when the application to record a mining claim is submitted under subsection (1), pay or cause to be paid to the Department a fee of ten dollars.

**20.** The inclusion in a mining claim of more or less than the area stated in Section 14 or the failure of the permit holder to describe or set out in the application, sketch or plan filed at the Department under Section 19 the actual area or parcel of land staked out shall not, where the Minister is satisfied that the permit holder has attempted in good faith to comply with this Act, invalidate the mining claim.

Mining claim not invalidated where more or less than the prescribed area is staked out through inadvertence.

**21.—(1)** The Minister shall, as soon as they are received, cause to be entered in the proper book at the Department particulars of any application to record a mining claim which is, in the opinion of the Minister, made in accordance with this Act, unless a prior application in respect of the same land or mining rights or a substantial portion thereof is already recorded in the Department under this section and is subsisting, and the Minister shall cause the application and the sketch or plan and affidavit submitted with it to be filed in the Department; and every application which may be recorded under this Act shall, as soon as it is received in the Department, be deemed to have been recorded at the time of receipt even where the entry and filing required under this subsection are not done as soon as the application is received.

Entry of application at Department.

(2) Where an application is submitted to the Department which, in the opinion of the Minister, may not be recorded under this Act, or is made in respect of lands or mining rights which are, or any substantial portion of which is, included in a mining claim already recorded and subsisting, the Minister shall not permit the application then submitted to be recorded.

Applications which may not be recorded.

(3) Where a permit holder who has fulfilled all of the requirements of this Act relating to the recording of a mining claim applies to have the claim recorded and his application is refused under subsection (2), the Minister shall receive and file the application without recording it, if the permit holder so requests, and thereafter all questions relating to the application which need to be settled shall be determined in accordance with this Act.

Refusal to record claim where Act complied with.

Application under subsection (3) not deemed dispute.

(4) An application filed under subsection (3) shall not be deemed to be a dispute of any subsisting recorded mining claim for any of the purposes of this Act nor shall it be noted or dealt with as such, but in any such case there may be filed in the Department a dispute which is made by or on behalf of the permit holder in accordance with Section 22.

Disputing a claim.

**22.**—(1) A permit holder or any person acting on behalf of a permit holder may submit to the Department a dispute verified by affidavit alleging that any mining claim standing on the books of the Department as recorded is illegal or invalid in whole or in part, and he shall state in the dispute whether he or the permit holder on whose behalf he files the dispute claims that he is entitled to have a mining claim recorded in respect of or that he is entitled to any interest in the land or mining rights involved in the dispute or any part thereof and, if he makes any such claim, he shall in the dispute give particulars of his claim.

Form of dispute and affidavit.

(2) The Minister may prescribe the form of a dispute to be filed under subsection (1) and the form of the affidavit in verification.

Dispute to be filed in duplicate.

(3) Every dispute submitted under subsection (1) shall be in duplicate and if the person submitting the dispute does not comply with this subsection the Minister may refuse to allow the filing of the dispute at the Department, or he may collect from the person filing it a fee of ten cents a folio, if it is necessary to make a copy of the dispute in the Department.

Fee.

(4) When a dispute is submitted to the Department under subsection (1) a fee of an amount to be prescribed by the Minister shall be paid to the Department by the person submitting the dispute.

Address for service.

(5) A dispute shall not be filed at the Department under this section unless there is plainly set forth thereon an address for service of some place within the province.

Disputes which may not be filed.

(6) No dispute may be filed under this section against any claim

- (a) in respect of which a certificate of record was issued under Section 23;
- (b) which was recorded at the Department sixty days before the date of the submission of the dispute; or
- (c) which was adjudicated on in accordance with this Act by a judge or the Minister.

(7) When a dispute is submitted to the Department in accordance with this section and the fee payable in respect of it is paid, the Minister shall cause the dispute to be filed at the Department and shall, not later than the day following that on which it was filed, transmit by registered post to the recorded holder or holders of the mining claim affected by the dispute a copy of the dispute and the affidavit verifying it.

Filing of  
dispute.

**23.**—(1) Subject to subsection (2), the Minister shall, upon the expiration of sixty days after a mining claim is recorded in accordance with this Act, issue to the permit holder in whose name the mining claim is recorded a certificate of record, upon payment of the prescribed fee, if all compensation in respect of surface rights payable by the permit holder under this Act has been paid or secured.

Certificate  
of record.

(2) Subject to subsection (3), no certificate of record shall be issued where a dispute is filed against the claim under Section 22 and remains unsettled, or where, by reason of an order, a pending proceeding, or other special matter or thing it would, in the opinion of the Minister, be improper to issue a certificate of record.

Prohibition  
on issue of  
certificate.

(3) The Minister may, where he deems it necessary or desirable, issue a certificate of record in respect of any portion of a mining claim which is not affected by any of the matters referred to in subsection (2), in the same manner, upon the same terms, and subject to the same conditions as a certificate may be issued under subsection (1).

Certificate  
in respect of  
portion of  
claim.

(4) A certificate of record issued under this section shall be in the prescribed form.

Form of  
certificate.

Certificate of record is conclusive.

**24.** In the absence of mistake or fraud, a certificate of record issued under Section 23 is final and conclusive evidence of the performance by the permit holder to whom it was issued of all the requirements relating to the mining claim or any part thereof in respect of which the certificate was issued which under this Act are prerequisite to the issue of a certificate of record, except the conditions relating to assessment work prescribed by this Act, and when a certificate is issued the mining claim to which it relates shall not be subject to impeachment or forfeiture except in accordance with this Act.

Revocation of certificate issued by mistake or obtained by fraud.

**25.** A judge may, upon the application of the Crown or of any person interested, revoke a certificate which was issued by mistake or obtained by fraud.

Staking out, applying for or recording a claim does not give permit holder any title.

**26.—(1)** A permit holder does not by staking out, making an application for or recording a mining claim or by doing all those things acquire any right, title, interest or claim in or to

- (a) the mining claim, other than the right to obtain, in accordance with this Act, a certificate of record, a development licence and a mining lease; or
- (b) any quarry materials, coal, oil, natural gas or salt situated on, in or under the land covered by the staking out, application or recording.

Reservation of substances to Crown.

(2) All of the substances referred to in paragraph (b) of subsection (1) together with the right of access thereto are reserved to the Crown unless and until a permit or a lease relating to them or any of them is issued under this Act; and where no permit or lease is issued in respect of any of those substances the Minister may, in the public interest and for public purposes, use or dispose of them in such manner, upon such terms and subject to such conditions as he deems fit.

Particulars relating to applications, etc.

**27.—(1)** An application relating to a mining claim made under this Act or a transfer or assignment of a mining claim or any part thereof or any interest in either of them shall not be filed or recorded in the Department unless it contains or has attached thereto a memorandum showing the place of residence and the post office address of the applicant, transferee or

assignee and, if he does not reside in Newfoundland, the name, residence and post office address of some person resident in Newfoundland upon whom, subject to this Act, service may be made.

(2) A permit holder may substitute for his own name or the name of another person given by him under subsection (1), as one upon whom service may be made, the name of any other person resident in Newfoundland by filing in the Department a memorandum stating his desire so to do and containing the name, residence and post office address of the person whom he desires to substitute.

Filing of name of person for substituted service.

(3) Service of any notice, demand or proceeding relating in any way whatsoever to a mining claim or any part thereof or any interest in either effected on a person substituted for a permit holder under subsection (1) or (2) is deemed to be service on the permit holder.

Substituted service valid.

**28.**—(1) A notice of a trust expressed, implied or constructive relating to any mining claim, development licence or mining lease recorded or issued under this Act shall not be received at the Department or entered in the records thereof.

Notice of trust not receivable.

(2) Where a holder of a mining claim, development licence or mining lease recorded or issued under this Act is described as a trustee, whether the beneficiary or object of the trust is or is not stated, he may, nevertheless, deal with the claim, licence or lease as if he held all of the legal and equitable title therein and any person dealing with him may do so without making any enquiry as to the power of the holder to deal with the claim, licence or lease.

Holder who is trustee may deal with claim, etc.

(3) Nothing in this section relieves the holder of a mining claim, a development licence or a mining lease who is a trustee thereof or of any part thereof or of any right or interest in either from liability to any person, partnership or corporation for whom he is a trustee but that liability and any personal liability or obligation shall be incurred, imposed or continued as if this section had not been enacted.

Trustee not relieved of liability as trustee.

Contracts made before claim recorded to be proved by writing.

**29.** No person may, in respect of any minerals, mining claim, mining lands or mining rights staked out or recorded by another, enforce any claim, right or interest contracted for or acquired before the recording was done, unless the claim is evidenced by an agreement or memorandum in writing signed by the person against whom he seeks to enforce the claim to or by the lawfully authorized agent of that person.

Transfer of mining claim or other right or interest therein.

**30.**—(1) A transfer or assignment of or an agreement relating to a mining claim, development licence, mining lease, boring permit, boring lease or quarry lease or any right or interest therein acquired under this Act or otherwise may, subject to Section 29, be made only by deed and in accordance with this Act; and the deed shall be executed by the transferor, assignor or other person from whom any interest or right passes under it or by some person holding a valid power of attorney to execute a deed on his behalf and the execution shall be proved by the affidavit of a subscribing witness.

Form of deed and affidavit.

(2) A deed or affidavit made under subsection (1) shall be in the prescribed form or in any form approved by the Minister.

Registration of instruments.

**31.**—(1) Every instrument referred to in Section 29 or 30 which is executed and proved in accordance with those sections may, subject to this Act, be registered in the Department upon the application of any person interested therein and the payment to the Department of the prescribed fee.

Idem.

(2) Where an instrument is executed under power of attorney the power of attorney shall be registered with it.

Execution and proof.

(3) Subject to this Act, any instrument referred to in Section 29 or 30 which is not executed and proved in accordance with those sections may not be registered.

Effect of registration.

**32.**—(1) Subject to Section 31, the registration of an instrument under that section constitutes, from the time of the deposit for registration in the Department, notice of the instrument to all persons claiming any interest in the subject matter of the instrument even where there is a defect in the proof required for registration.

(2) In the absence of fraud priority of registration shall prevail. Priority.

**33.** Every instrument, other than a will, which in any way affects a recorded mining claim or any right or interest therein and is not registered in accordance with this Act is void against any subsequent purchaser, transferee or other person who acquires any right or interest in the mining claim without actual notice of the unregistered instrument and first registers, in accordance with this Act, the instrument under which he acquired the interest. Unregistered instrument void.

**34.—(1)** Every fee simple mining grant and every agreement or instrument of any other kind whatsoever affecting a mining claim, made under any Act or law that was in force at any time before the enactment of this Act, and every transfer or assignment thereof and every agreement relating thereto made before or after the enactment of this section may, if the execution thereof is proved by the affidavit of a subscribing witness, be registered in the Department in the manner provided by Section 31 for the registration of instruments referred to in Sections 29 and 30. Registration of fee simple mining grants.

(2) Where a grant, other instrument, transfer, assignment or agreement referred to in subsection (1) is executed under power of attorney, the power of attorney shall be registered with it. Power of attorney to be registered.

(3) Any grant, instrument, transfer, assignment or agreement referred to in subsection (1) that was registered in the Department on the date that this Act came into force shall from that date be deemed to have been registered under this Act, but this subsection shall be deemed to be in addition to and not in derogation of any rights obtained by the previous registration. Grant, etc., registered before Act in force deemed registered.

(4) This Act applies to any grant, instrument, transfer, assignment or agreement registerable or registered under this section as if it was an instrument to which Section 31 applies. Application of Act to grants, etc., registered under this section.

Registration  
of judgments,  
orders and  
decisions  
affecting  
recorded min-  
ing claims.

**35.**—(1) When any judgment, order or decision is given or made by a judge or the court which in any way affects any recorded mining claim or any other right or interest therein, the Registrar of the Court shall, on the request of any interested party, transmit to the Department a copy of the judgment, order or decision certified by him to be a true and correct copy.

Idem.

(2) When a copy of a judgment, order or decision referred to in subsection (1) is received in the Department, the Minister shall cause to be registered upon the record of the mining claim or other right or interest affected thereby

- (a) a note of the judgment, order or decision;
- (b) the date on which the judgment, order or decision was made or given and the date of its entry in the Department; and
- (c) a description of the effect of the judgment, order or decision.

Fee.

(3) A prescribed fee for the registration of any instrument under this section shall be payable in the first instance by the party at whose request it was transmitted to the Department.

Certificate  
relating to  
a proceeding  
affecting a  
mining claim.

**36.**—(1) Where a proceeding is pending before a judge or the court which affects a recorded mining claim or any right or interest therein a judge may, upon the application of any interested party, issue a certificate stating that the proceeding is pending.

Registrar to  
send certificate  
to Department.

(2) When a certificate is issued under subsection (1), the Registrar of the court shall forthwith transmit it to the Department.

Registration  
of certificate.

(3) When a certificate issued under subsection (1) is received in the Department, the Minister shall cause it to be registered in the Department in the same manner and subject to the same conditions as if it was a judgment, order or decision referred to in Section 35.

**37.**—(1) A judge may, on the application of any interested party and if he deems it just so to do, make an order cancelling a certificate issued under Section 36.

Cancellation of a certificate issued under Section 36.

(2) Where a certificate is cancelled under subsection (1) the Registrar of the court shall thereupon transmit to the Department a copy of the order cancelling the certificate, certified by him to be a true and correct copy.

Order to be transmitted to Department.

(3) When a copy of an order made under subsection (1) is received in the Department, the Minister shall cause an entry to be made in the Department in the same manner and subject to the same conditions as if it was a judgment, order or decision referred to in Section 35 and shall cause a copy of the certificate to be sent forthwith by registered post to every recorded holder of any interest in the mining claim.

Recording of order in Department.

**38.**—(1) The Sheriff of Newfoundland shall, upon the application of any interested party and the payment by that party of a fee of one dollar, transmit to the Department a copy of every writ of execution issued against the property of the holder of a recorded mining claim or any recorded right or interest therein and the copy shall be certified by the Sheriff to be a true and correct copy of the writ of execution.

Registration of writs of execution.

(2) The person at whose behest the copy of the writ of execution is forwarded to the Department under subsection (1) shall cause to be sent with it a memorandum giving the number and description of the mining claim or claims, or the right or interest therein in respect of which the copy is transmitted to the Department.

Memorandum to be sent with writ.

(3) The Minister shall, when a copy of the writ of execution and the memorandum relating to it referred to in subsections (1) and (2) are received and any fee prescribed is paid to the Department, cause it to be registered on the record of every mining claim or other right or interest recorded in the Department in the name of the execution debtor.

Writ and memorandum to be recorded in Department.

(4) From the time when a writ of execution is registered in accordance with this section no person other than the Sheriff may deal with a recorded mining claim or other right or interest in

Sheriff dealing with claim after writ registered.

respect of which it was registered unless and until a release is recorded under subsection (6); and the Sheriff may do anything which the execution debtor could have done before the registration to keep the claim, right or interest in good standing or to restore it to good standing and may sell, realize upon or dispose of it in the same way as he may sell, realize upon or dispose of goods and chattels taken under a writ of execution.

Transfer of claim, etc., by Sheriff.

(5) A transfer or assignment of a claim, right or interest made by the Sheriff under this section shall be made in accordance with Section 30 and shall be deemed to have been made by the execution debtor, if the transferee or assignee is a permit holder.

Release of charge.

(6) The charge upon a recorded mining claim or other recorded right or interest imposed by registration under this section may be released by registering at the Department

- (a) a certificate of the Sheriff stating that the execution debt is satisfied;
- (b) a release made by the execution creditor; or
- (c) an order from a judge directing the release.

Fees.

(7) All fees, costs, and charges arising out of or incidental to a registration made under this section may be added to the execution debt.

Effect of registration under Sec. 35, 36, 37 or 38.

**39.** Every instrument recorded under Section 35, 36, 37 or 38 is, for the purposes of this Act, deemed to have been registered under Section 31.

Assessment work.

**40.—(1)** Subject to this Act, the recorded holder of a mining claim shall, before the expiration of three years after the date on which the claim was recorded, do or cause to be done on the lands covered by the claim work not less than an aggregate of one hundred and fifty days of eight man hours each in drilling, geophysical, geological or other surveying, stripping or opening up mines, sinking shafts or other actual mining operations and

- (a) not less than fifty of those days of work shall be done thereon during the year immediately following the recording of the claim; and
- (b) not less than one hundred of those days of work shall be done thereon before the expiration of two years immediately following the recording of the claim.

(2) Where, during the first or second year after the recording of a mining claim, more work than that required under paragraph (a) or (b) of subsection (1) is done, the excess shall, upon proof of its performance, be credited to any subsequent year of the period of three years referred to in that subsection. Excess work.

**41.** In computing the amount of work to be done for the purposes of Section 40, the work referred to in this section shall be counted, subject to the following conditions: Conditions under which certain work may be counted for the purposes of Sec. 40.

- (a) Work done by a surveyor under Section 58 shall be counted as forty days of eight man hours each if all of the requirements of this Act relating to the work done by the surveyor are fulfilled but that work shall not be counted in computing the amount of work to be done under paragraph (a) of subsection (1) of Section 40.
- (b) Work done by boring with a diamond or other core drill shall be counted
  - (i) at the rate of one day of eight man hours for each two feet of boring, where the core from the drill is less than seven-eighths of an inch in diameter, and
  - (ii) at the rate of one day of eight man hours for each foot of boring where the core from the drill is not less than seven-eighths of an inch in diameter.
- (c) Work done by a compressed air drill or any other power-driven rock drill of a type approved by the Minister shall count at the rate of two days of eight man hours each for each day of work actually done by every

man who, in the opinion of the Minister, is necessarily employed in operating the drill.

(d) A geophysical or a geological survey of a mining claim undertaken with the written approval of the Minister and completed to his satisfaction may be counted

(i) where the survey is a geophysical survey and is done on the ground, at the rate of four days of eight man hours each for every day of eight man hours of work actually done by every man who, in the opinion of the Minister, is necessarily employed in the survey,

(ii) where the survey is an airborne geophysical or magnetic survey, at the rate of twenty days of eight man hours each for each continuous mile of recordings, and

(iii) where the survey is a geological survey, at the rate of four days of eight man hours each for every day of eight man hours of work actually done by every man who, in the opinion of the Minister, is necessarily employed in the survey,

but no more work may, in respect of each mining claim, be counted under this paragraph than forty days of eight man hours each in respect of every geophysical or geological survey; and work counted under this paragraph and so recorded in the Department shall be cancelled unless full reports and plans thereof in duplicate are, before the expiration of sixty days after the recording of such work, submitted to the Department and approved by the Minister.

(e) The actual cost of stripping by power-driven mechanical equipment or any other equipment operated by means other than muscular power may be counted at the rate of one day of eight man hours for every amount of five dollars included in the cost, but no more than one hundred days of eight man hours each may be counted under this paragraph in respect of

each claim; and work counted under this paragraph and so recorded shall be cancelled unless proof, satisfactory to the Minister, of the actual cost of the work is submitted to the Department before the expiration of thirty days after the date on which the work was recorded.

**42.**—(1) A permit holder may, for the purposes of Section 40, do or cause to be done, on one or more mining claims, all of the work required to be done in respect of a number of contiguous claims, not exceeding nine, recorded in the name of the permit holder; and where he does work in accordance with this subsection he shall, in the report to be submitted by him under Section 45, indicate the claim or claims on which the work was done and the claim or claims in respect of which it was done; but this subsection does not apply to any geophysical or geological survey, but for the purposes of Section 40 any such survey is deemed to have been performed equally on every mining claim actually covered by the survey.

Work required in respect of several contiguous claims may be done on one or more claims.

(2) Where work is done by diamond drilling and the drill core is not less than seven-eighths of an inch in diameter or where the work done is an underground development consisting of shaft sinking, cross-cutting or drifting, a permit holder may, for the purposes of Section 40 and subject to the approval in writing of the Minister, do on one or more mining claims all of the work required to be done in respect of a number of contiguous claims not exceeding eighteen, if each of those claims is recorded in his name; and where he does work in accordance with this subsection he shall give, in the report to be submitted by him under Section 45, details respecting the claims similar to those referred to in subsection (1).

Idem.

**43.**—(1) Where any of the work referred to in Section 40 is not done within the period prescribed by that section and

Extension of periods referred to in Sec. 40.

- (a) the performance of the work has been delayed because of a pending proceeding or the death or incapacity through illness of the permit holder; or
- (b) the performance of the work has been delayed by any cause whatsoever other than that mentioned in

paragraph (a) of this subsection, whether the cause is of the kind mentioned in that paragraph or not, and the Lieutenant-Governor in Council has approved the extension of that period,

the Minister may by order make such extension of the period as to him seems reasonable, and work done within any period so extended is deemed to have been done in accordance with that section.

Note to be entered on record where order made under subsection (1).

(2) Where the Minister makes an order under subsection (1), he shall cause a note to be entered on the record of the mining claim to which the order relates showing

- (a) the date on which the order was made;
- (b) the period which was extended under the order;
- (c) the duration of the extended period; and
- (d) the amount of the work covered by the order.

Payment of money in lieu of work required under Section 40.

**44.**—(1) Where the permit holder was unable, for any reason, to do or have done the whole or any part of the work required to be done under Section 40, he may pay to the Department an amount to be calculated at the rate of ten dollars for every day of eight man hours of work required to be done under that section and left undone.

Payment deemed compliance with Section 40.

(2) Where a payment is made by a permit holder in accordance with subsection (1), he is deemed from the date of the payment to have fulfilled the requirements of Section 40 relating to the assessment work covered by the payment.

Report relating to assessment work.

**45.** Every recorded holder of a mining claim shall, within thirty days after

- (a) the expiration of each of the periods referred to in paragraphs (a) and (b) of Section 40; and
- (b) a period of three years from the date when the claim was recorded,

submit to the Department a report relating to the work done by him or done on his behalf under that section during the period concerned and setting forth

- (c) the location, nature and extent of the work;
- (d) the names and addresses of the men who performed the work; and
- (e) the dates on which each man worked,

and where the work included diamond or other core drilling, he shall submit with the report a core log in duplicate indicating the footages of the rock types encountered and the angle and direction of the drill hole; and the report shall be verified by the affidavit of the permit holder made in the prescribed form.

**46.**—(1) Subject to this Act, the Minister shall, where he is satisfied that the requirements of Section 40 are fulfilled, issue to the permit holder in whose name the claim is recorded a certificate stating that the work required to be done under that section was done and the certificate shall, in the absence of fraud or mistake, be final and conclusive evidence of the due performance of that work.

Issue of certificate.

- (2) The certificate shall be in the prescribed form.

Form.

(3) The Minister may, before issuing a certificate under subsection (1), inspect or order the inspection of the work concerned, or otherwise investigate the question of its sufficiency.

Inspection of work.

(4) Where a certificate was under subsection (1) issued by mistake or obtained through fraud a judge may cancel it upon the application of the Crown or any interested party.

Mistake or fraud in issue of certificate.

(5) A decision of a judge respecting the fulfilment of the requirements imposed by Section 40 is final and binding upon all the parties.

Decision of judge on fulfilment of requirements.

**47.**—(1) A permit holder may, by leaving at the Department a notice in writing addressed to the Minister, abandon a mining claim recorded in his name,

Abandonment of mining claim.

Notice of  
abandonment.

(2) Where a notice is given by a permit holder under subsection (1) the Minister shall cause to be entered upon the record of the claim affected by the notice the date of the receipt of the notice and shall cause to be posted up forthwith in the Department a notice of the abandonment of the claim containing the date of the posting up; and thereupon all of the interest of the permit holder in the claim shall cease and on the thirty-second day from the date of the posting up of the notice of abandonment the lands covered by the claim shall be open for prospecting and staking out.

Non-compliance with requirements of Act deemed to be abandonment.

**48.** A permit holder who, in respect of any recorded mining claim, fails, within the time limited therefor, to comply with any requirement imposed upon him by or under this Act or the regulations as to the time or manner of the staking out or the recording of a mining claim or the direction of the Minister relating thereto is deemed to have abandoned it, and without any declaration, entry or act on behalf of the Crown the mining claim shall thereupon be extinguished and, unless a judge orders otherwise, be open forthwith for prospecting and staking out.

Cancellation of mining claim.

**49.—(1)** Subject to Section 50, where in respect of any recorded mining claim or any right or interest therein

- (a) the person in whose name the mining claim is recorded is not a permit holder;
- (b) without the consent in writing of the Minister or a judge or for any reason of fraud or deception or for any improper purpose, the person in whose name the mining claim is recorded removes or causes or procures to be removed any stake or post forming part of the staking out of the mining claim or changes or effaces or causes to be changed or effaced any writing or mark upon any such stake or post;
- (c) any work required to be done under this Act is not properly done;
- (d) any report relating to the work referred to in paragraph (c) required to be made under this Act is not properly made; or

- (e) a period of three years has elapsed since the date on which the certificate of record was issued and the person in whose name the mining claim is recorded has not applied for a development licence in accordance with this Act,

the Minister shall enter upon the record of the mining claim a note of any such act or default which was proved to his satisfaction together with the date of the entry, and he shall also mark the record with the word "cancelled" and thereupon the mining claim shall be extinguished; and upon the expiration of three months from the date on which the entry was made the mining claim so extinguished shall, subject to this Act, be open again for prospecting and staking out.

(2) Where the Minister causes an entry to be made under subsection (1) cancelling any recorded mining claim or right or interest therein, he shall forthwith cause to be posted up in the Department a notice of the cancellation and shall, by registered letter mailed not later than the next day, notify the holder of the claim of the cancellation and the reasons therefor.

Notice of  
cancellation.

**50.**—(1) Where a recorded mining claim or any right or interest therein was extinguished or cancelled under Section 48 or 49, a judge may, before the expiration of three months after the date of the extinguishment or cancellation and upon such terms and conditions as he may deem fit, make an order restoring the right or interest of any person which was so extinguished or cancelled.

Restoration  
of rights.

(2) Where an order is made under subsection (1), the right or interest of the person in respect of whom the order was made which was extinguished or cancelled under Section 48 or 49 shall, subject to the fulfilment of the terms and conditions contained in the order and subject to this Act, revert in that person.

Revesting  
of rights or  
interests.

(3) Where an order is made under subsection (1) in respect of any recorded mining claim or any right or interest therein, the order shall not become operative

Conditions  
precedent to  
order under  
subsection (1)  
becoming  
operative.

- (a) where the claim, right or interest restored under the order was cancelled for the reason referred to in para-

graph (a) of subsection (1) of Section 49, until the person in respect of whom the order was made pays to the Department the sum of twenty dollars for every recorded claim or recorded right or interest therein which is the subject of the order and obtains from the Department a special licence marked as such; or

- (b) where the claim, right or interest restored under the order was cancelled for the reason referred to in paragraph (d) of subsection (1) of Section 49, until the person in respect of whom the order was made files a report in accordance with Section 45 and pays to the Department a fee of ten dollars for every recorded claim or recorded right or interest therein which is the subject of the order.

Transfer of  
divested  
interest.

**51.** Where the right or interest of a joint holder of a recorded mining claim was extinguished for the reason referred to in paragraph (a) of subsection (1) of Section 49 a judge may, upon such terms and conditions as he may deem fit, order that the right or interest pass to and vest in any other joint holder and if there is more than one such joint holder, the right or interest so passing to and vesting in them shall be shared by them in proportion to the interests in the claim which they hold.

Relief where  
permit holder  
dies.

**52.—(1)** Where the permit holder in whose name a mining claim was staked out either solely or jointly dies before the claim is recorded or where a permit holder in whose name a claim was recorded either solely or jointly dies before the issue to him of a development licence under this Act, no person may, without leave of a judge, stake out or record a mining claim upon any part of the lands so staked out or in respect of which a mining claim was recorded or acquire any right, privilege or interest in respect of any such lands, until the expiration of twelve months from the date of the death of the permit holder.

Judge may  
make vesting  
order.

(2) In any case referred to in subsection (1) a judge may make an order, on such terms and conditions as he may deem fit, vesting the right or interest of the deceased permit holder in his personal representative, and an order may be made under this subsection even where the right or interest of the holder was extinguished, cancelled or forfeited under this Act.

**53.**—(1) For the purpose of ascertaining whether a person has complied or is complying with this Act, the Minister or any person thereto authorized by him may inspect a mining claim without notice to the permit holder, but when a certificate of record is issued no inspection shall, unless a judge so orders, be made under this section for the purpose of ascertaining whether the claim was staked out in accordance with this Act.

Inspection.

(2) For the purpose of determining a dispute or other proceeding requiring settlement by him under this Act, the Minister may, by himself or by any person thereto authorized by him, take a view or make an inspection of any mining claim or the land covered by the claim or any property situated thereon, and when determining a dispute or other proceeding under this Act the Minister may take into account the result of the view or inspection.

Idem.

(3) Every person who makes an inspection under subsection (1) shall file in the Department a report of the inspection and the Minister shall thereupon cause to be entered upon the record of the mining claim concerned a notice stating the effect of the report and the date of the entry.

Report of inspection.

**54.**—(1) A permit holder or any person who prospects for minerals, stakes out a mining claim or an area of land for a boring permit or carries on operations under a development licence, a boring permit, a mining lease or a boring lease or operates a mine or quarry upon

Compensation for surface rights.

(a) any surface rights; or

(b) Crown lands which, before the first day of January, 1931, were occupied and which thereafter were continuously occupied by any person or by anyone through whom he claims or by all of them and which were, in the opinion of the Minister, improved to such an extent as to entitle the occupant to compensation,

shall pay compensation to the owner, lessee or occupant for any injury or damage caused to the surface rights by such prospecting, staking out or operations.

Fixing of  
amount of  
compensation.

(2) The amount of the compensation payable under subsection (1) may, in default of agreement between the parties, be fixed by a judge who may also determine the time and the manner of payment.

Notice of  
application.

(3) Any party who desires to have the amount of the compensation fixed by a judge under subsection (2) may apply to the judge and before doing so he shall give to all interested persons ten days' notice in writing of his application or such longer period of notice as the judge may order.

Order re  
compensation.

(4) Subject to subsection (5), an order of a judge made under subsection (2) is final and binding upon all the parties.

Appeal.

(5) Where the amount of compensation fixed under subsection (2) exceeds one thousand dollars, either party may appeal to the court from the order of the judge.

Security.

(6) A judge before whom a proceeding is taken under subsection (2) may order any person from whom the compensation is claimed to give security for the payment of any amount which may be fixed and may pending the termination of the proceeding prohibit further prospecting, staking out or working by the person from whom the compensation is claimed or by any person claiming under him.

Right of  
prohibited  
person.

(7) Where an order of prohibition is made under subsection (6), no other person may prospect, stake out or work a mining claim to the prejudice of the prohibited person.

Lien for  
compensation.

**55.** Compensation payable under Section 54 shall, from the date when it becomes due, attach to and upon any mining claim or other right or interest acquired or held by the person liable to pay the compensation or by anyone claiming under him in the surface rights in respect of which the compensation is payable; and when compensation is so payable the holder of any such claim, right or other interest shall not, except by leave of a judge, do any further prospecting, staking out or working on those surface rights until the compensation is paid or secured.

Reduction of  
the area of a  
mining claim.

**56.** Where a mining claim is staked out on any surface rights a judge or the Minister may, upon application, reduce

the area of the mining claim if in his opinion an area less than that prescribed by this Act is sufficient for working the mines and minerals on the land.

**57.**—(1) Subject to this Act, the Minister shall issue to the holder of a certificate of record a development licence relating to the lands covered by the certificate, if the holder applies for the licence at any time during the period between the date on which the certificate was issued and the expiration of three years from that date, upon the payment to the Department by the holder of a fee of ten dollars and an annual rental of fifty cents for every acre covered by the licence.

Development  
licence.

(2) A development licence may not be issued under subsection (1) in respect of more than six mining claims of forty acres each and when issued is valid for one year from the date of issue and may not be transferred except with the consent in writing of the Minister.

Restriction  
on issue of  
licences.

**58.** A development licence shall not be issued to an applicant under Section 57 unless the applicant at his expense and before the expiration of

Survey of  
mining claim.

- (a) three months from the date of the application causes every mining claim covered by the application to be surveyed in accordance with this Act by a surveyor approved by the Minister; and
- (b) four months from the date of the application causes the plan and field-notes of the survey made by a surveyor under this section and a metes and bounds description of every such mining claim and the certificate of the surveyor referred to in subsection (2) of Section 59 to be furnished to the Minister.

**59.**—(1) A surveyor making a survey of a mining claim for the purposes of Section 58 shall

Manner of  
surveying  
claim.

- (a) establish the boundaries of the mining claim by running straight lines from No. 1 post at the northeast angle of the claim to No. 2 post at the southeast angle, from No. 2 post to No. 3 post at the southwest angle and

from No. 3 post to No. 4 post at the northwest angle and from No. 4 post to No. 1 post; and where a mining claim has a common boundary with a mining claim already surveyed under this section the boundaries of the mining claim so surveyed shall prevail;

- (b) mark out the sidelines on the ground by blazing the adjacent trees distinctly on three sides of the tree, making one blaze on each tree in the direction of the line and one on the side by which the line passes;
- (c) plant at each angle of the mining claim and set in concrete a metal post not less than three-quarters of an inch square or in diameter bearing the recorded number and letter or letters, if any, of the mining claim permanently marked thereon, and plant at or near each of those metal posts a large wooden guide post marked with such number and letter or letters; and
- (d) connect the survey with some known point in any previous survey or with some other point or boundary which, in the opinion of the Minister, can be identified so that the mining claim may be laid down on the maps at the Department.

Idem.

(2) A surveyor shall, before commencing a survey for the purposes of Section 58, examine the application made under Section 19 relating to the mining claim to be surveyed and the sketch or plan of the mining claim filed in the Department under that section or a certified copy thereof; and before completing or filing his survey ascertain by careful examination of the ground and by all other reasonable means in his power whether any other subsisting claim conflicts with any mining claim or part thereof included in his survey, and he shall include with the field-notes of his survey a certificate completed in the following form:

CERTIFICATE.

I certify that I have carefully examined the ground included in Mining Claim No. \_\_\_\_\_ surveyed by me and I have otherwise made all investigations in my power to ascertain if there

was any other subsisting claim conflicting therewith and I have found no trace or indication and I have no knowledge or information of any conflicting claim except as follows: (If none, state; if any, give particulars).

**60.** Every survey of a mining claim made in accordance with Section 59 and approved by the Minister is deemed for all purposes to be a true and correct survey of the mining claim unless and until the survey is altered in accordance with this Act.

Survey deemed to be true and correct.

**61.**—(1) Where, upon a survey made under this Act, it is found that the area of a mining claim exceeds the prescribed acreage, the Minister may require that the size of the claim be reduced to the prescribed acreage.

Minister may require reduction of the area of a claim.

(2) A reduction of the size of a claim required under subsection (1) shall be made by

Methods of making reduction.

- (a) keeping No. 1 post as the northeast corner and taking the straight line adjoining No. 1 and No. 2 posts, or if that line exceeds one thousand three hundred and twenty feet in length the northernmost part of it measuring one thousand three hundred and twenty feet, as the eastern boundary; and
- (b) keeping the southern and western boundaries respectively parallel to or coinciding with the straight lines joining No. 2 and No. 3 posts and No. 3 and No. 4 posts, but shortening each of those boundaries to one thousand three hundred and twenty feet where it exceeds that length and connecting the northwest corner established under this paragraph with No. 1 post for the northern boundary; or
- (c) such other manner as the Minister may, upon the report of the surveyor, direct.

**62.** No person shall sell or remove from the lands covered by a mining claim or development licence any minerals other than a quantity sufficient for assaying, analyzing or metallurgical testing.

Minerals not to be sold or removed under mining claim or development licence.

Development licence may be issued without staking in certain cases.

**63.** A development licence may be issued under Section 57 without staking out the land concerned as a mining claim where the area in respect of which the application is made is

- (a) covered by the sea or by tidal waters; or
- (b) situated on an island off the sea coast and the area of the island is not greater than two hundred and forty acres.

Buildings or works may not be constructed which interfere with right of access over water.

**64.** The holder of a development licence or a mining lease relating to a location under water may not construct buildings or carry on works which interfere with the right of a proprietor of adjoining land to access to that land over the water.

Annual renewal of development licence.

**65.—(1)** Subject to this Act, a person to whom a development licence was issued may obtain an annual renewal of that licence.

Conditions for renewal.

(2) A renewal of a development licence shall not be issued to a person under subsection (1) unless

- (a) where
  - (i) a first renewal is applied for, that person has since the development licence was issued and before that licence expired, or
  - (ii) a second or further renewal is applied for, that person has since the last renewal was issued and before that renewal expired,

done or caused to be done on one or more parts of the land comprised in the development licence twenty-five days' work of eight man hours each for every forty acres of land and for any portion of land less than forty acres comprised in the area covered by the development licence in respect of which the renewal is sought; and

- (b) he applies to the Department for the renewal before the expiration of the development licence or the last renewal thereof or within ten clear days after the expiration.

(3) Before a development licence or renewal thereof expires or within ten days after the licence or renewal expires the holder of the licence or renewal shall file at the Department an affidavit showing whether the work referred to in paragraph (a) of subsection (2) was done during the period stated in that subsection and the extent of that work.

Affidavit  
to show  
work done.

(4) Before a renewal of a development licence is issued under subsection (1) the applicant shall pay to the Department the sum of ten dollars and an annual rental equal to the sum of fifty cents for every acre of land covered by the licence.

Fee and rental

(5) A development licence or a renewal thereof expires unless the holder thereof

Expiration  
of licence.

- (a) does the work referred to in paragraph (a) of subsection (2);
- (b) applies for a renewal in accordance with paragraph (b) of subsection (2);
- (c) files the affidavit referred to in subsection (3); and
- (d) pays to the Department the sums required to be paid under subsection (4).

**66.**—(1) The work referred to in Section 65 may consist of drilling, geophysical, geological or other surveying, stripping or opening up mines, sinking shafts or other actual mining operations and may be counted subject to the conditions set forth in Section 41.

Type of  
work to be  
done under  
development  
licence.

(2) Where adjacent lands are held in the name of the same person partly under a development licence and partly under a mining lease issued under this Act and may, in the opinion of the Minister, be considered as one and the same enterprise, the Minister may authorize that person to do all of the work required under Section 65 on the lands covered by the lease.

Owner of  
adjacent lands  
may do all  
work under  
Section 65.

**67.**—(1) Where a development licence is issued or renewed under this Act in error, it may be cancelled by the Minister within sixty days after the date of the issue or renewal, and where

Cancellation  
of development  
licence.

the issue or renewal of the licence was obtained through fraud or false representation, it may be cancelled by the Minister at any time.

Appeal. (2) Where a licence is cancelled under subsection (1) any interested party may appeal to a judge within thirty days after the date of the cancellation and the decision of the judge is final and binding upon all parties.

Mining lease. **68.**—(1) Subject to this Act, the Minister shall, upon application, issue to any person who holds a valid development licence issued under this Act a mining lease of all of the minerals situated on, in and under the lands covered by the development licence for a term not exceeding fifty years, upon payment by the applicant of an amount equal to the sum of five dollars for every acre of land to which the lease relates.

Conditions to be contained in mining lease. (2) A mining lease issued under subsection (1) shall contain the following conditions:

(a) The lessee shall, within two years from the date of the issue of the lease, commence the mining of the minerals comprised in the lease and shall expend on an exploration and development of those minerals, which, in the opinion of the Minister, is made in good faith, an amount not less than the sum of ten dollars for every acre of lands to which the lease relates.

(b) Commencing on the first day of January next following the expiration of the period of two years from the date of the issue of the lease, the lessee shall pay to the Department an annual rental equal to the sum of ten cents for every acre of land to which the lease relates, and the rental is payable in advance before the fifteenth day of January in each year.

(c) The Lessee shall, before the fifteenth day of February in each year of the term of the lease, submit a report to the Minister showing

(i) the total tonnage mined or produced during the previous calendar year or any part thereof included in the term,

- (ii) the concentrates obtained from the total tonnage mined or produced,
  - (iii) the average metal content of minerals and concentrates produced and processed during the year,
  - (iv) the places of sale of all products of the mine,
  - (v) the total number of men employed,
  - (vi) the total wages and salaries paid during the year, and
  - (vii) the gross value received from the sale of all minerals and concentrates.
- (d) The lessee shall fulfil and observe all of the requirements, conditions and provisions which apply to the lease under this Act.
- (e) Where the lessee fails to fulfil or observe any of the conditions contained in the lease the Minister may cancel the lease upon the publication of a notice stating his intention so to do in two issues of *The Newfoundland Gazette* and in one issue of a newspaper published in Newfoundland and the dispatch of a copy of the notice by registered letter addressed to the lessee at his last known address.

**69.**—(1) The Minister shall remit to the lessee the rental referred to in paragraph (b) of subsection (2) of Section 68 and paid in respect of any year, when the lessee has during that year expended an amount not less than two hundred dollars on mining work done in good faith and to the satisfaction of the Minister upon the land to which the lease relates or any portion thereof.

Refund of  
rentals.

(2) Proof of the expenditure referred to in subsection (1) shall be given by an affidavit of the lessee made to the satisfaction of the Minister.

Proof of  
expenditure.

Cancellation  
of lease.

**70.**—(1) When a lessee fails to fulfil or observe any of the conditions of a mining lease issued under Section 68, the Minister may, subject to paragraph (e) of subsection (2) of that section, cancel the mining lease and all leases of any surface lands issued under Section 73 in connection with the mining lease, and thereupon the minerals comprised in the mining lease and the lands comprised in those other leases shall revert to the Crown.

Appeal.

(2) Where a lease is cancelled under subsection (1) the lessee may appeal from the ruling of the Minister to a judge within thirty days following the date on which the lease was cancelled.

Right to  
remove mach-  
inery, chattels,  
or personal  
property.

**71.**—(1) Where the recorded holder of a certificate of record, a development licence or a mining lease abandons it, or where the claim, licence or lease is cancelled or forfeited under this Act, the holder may take from the land to which it relates any machinery, chattels or personal property within six months after the abandonment, cancellation or forfeiture or within such further time as may be fixed by a judge.

Chattels, etc.,  
remaining are  
property of  
Crown.

(2) Any machinery, chattels or property referred to in subsection (1) which remains on the land after the expiration of the period stated in that subsection becomes the property of the Crown, and an officer of the Department on the instructions of the Minister may take possession of such machinery, chattels and property in the name of the Crown.

Minerals in a  
small fraction  
of land may be  
sold to holders  
of abutting  
claims.

**72.**—(1) Where a survey made under Section 58 shows that a small fraction or gore of land exists between recorded mining claims, the Lieutenant-Governor in Council may, subject to this section, sell a recorded mining claim to the minerals in such fraction or gore to the holder of one or other of the claims which abut thereon, or may divide the claim for sale to all of those holders or may otherwise dispose of it as he may deem fit.

Sale to be  
by auction  
or tender.

(2) When a claim is sold under subsection (1), a sale shall be conducted by auction or tender, and the owners of all abutting claims shall be given an equal opportunity to bid or tender.

(3) The requirements of this Act relating to the staking out of a mining claim do not apply to any recorded mining claim disposed of under subsection (1).

Staking requirements do not apply to claim sold.

**73.**—(1) Subject to this Act, a mining lease issued under this Act vests in the lessee the exclusive right to explore, investigate, develop, extract, remove, deal with and otherwise dispose of all minerals on, in and under the land to which the lease relates.

Rights vested in lessee by mining lease.

(2) A mining lease issued under this Act entitles the lessee to obtain from the Crown concurrently therewith and from time to time a lease of so much unoccupied surface Crown lands, whether or not those lands are lands to which the mining lease relates, as may be reasonably necessary in connection with the mining of the minerals demised by the lease, including, without limiting the generality of the foregoing, such lands as may be reasonably necessary for rights-of-way, telegraphs, telephones, electric power transmission lines, railways, tramways, or roads or sites for mills, power plants, works, factories, warehouses, townsites, wharves, piers, docks or other shipping facilities for the purposes of the efficient construction, maintenance or operation of any mining undertaking conducted with relation to the minerals demised by the lease or for any other purposes incidental thereto on such terms and conditions as may be agreed to between the parties, but such lease shall not be for a longer term than the term of the mining lease in respect of which it is issued.

Mining lease entitles lessee to obtain lease of lands for purposes connected with mining.

**74.** Notwithstanding anything to the contrary contained in this Act and subject to Section 73, a certificate of record, a development licence or a mining lease issued under this Act does not entitle the holder thereof to possession of the lands to which the certificate, licence or lease relates, nor does the issue of any such certificate, licence or mining lease prevent the issue by the Crown to any person of assurances of those lands or any rights over those lands, exclusive of the minerals thereon, therein and thereunder that have not already been specifically leased or licensed or specifically agreed to be leased or licensed to the holder of any such certificate, licence or mining lease.

Certificate of record, development licence or mining lease does not entitle holder to possession of surface lands.

Work to be supplied and moneys to be contributed by each joint holder in proportion to his share.

**75.**—(1) Where two or more persons are the holders of a mining claim, a development licence or a mining lease issued under this Act upon which work is required to be done or moneys are payable to the Department under this Act, each of the joint holders shall supply the work or the moneys in proportion to his interest or in such other manner as may be agreed upon between all joint owners.

Judge may make order vesting interest of defaulting joint holder.

(2) Where any joint holder makes default in any obligation imposed on him by subsection (1), a judge may, upon the application of any other joint holder and upon notice being given by the applicant to all other joint holders and any other persons interested and upon hearing the evidence of all of the joint holders or such other persons, make an order vesting the interest of the defaulting joint holder in the other joint holders or in any of them upon such terms and conditions and in such proportion as he may deem just.

Interest of the holder of a claim or licence may be divested where he makes default in paying for work performed thereon.

**76.** Where the holder of an interest in a mining claim or development licence makes default in paying for work performed on the land comprised in the claim or licence by any person who is not the holder of an interest in the claim or licence, a judge may, upon the application of the person to whom the money is payable and upon notice to and after hearing all persons interested or such of them as may appear, make an order vesting in the applicant the interest of the defaulting holder in the mining claim or development licence or any part of such interest.

Boring permit.

**77.**—(1) The Lieutenant-Governor in Council may, subject to this Act, issue to a permit holder a boring permit granting to him the exclusive right to prospect during the period of one year from the date of the issue of the permit for coal, oil, natural gas or salt upon any area of land open for prospecting and staking out under this Act.

Area to be covered by boring permit.

(2) The area of land covered by the boring permit shall be rectangular in form and shall not exceed six hundred and forty acres in extent and the boundary lines of the area shall run due north and south and due east and west magnetically.

Application for boring permit.

(3) Every application for the issue of a boring permit under subsection (1) shall be filed at the Department and a copy

thereof shall be posted up at the Department as soon as the application is received.

(4) Before a boring permit is issued under subsection (1) the applicant shall

Requirements  
of applicant  
for boring  
permit.

- (a) stake out the area in respect of which the application is made or cause it to be staked out by another permit holder on behalf of the applicant and in his name;
- (b) plant or erect or cause to be planted or erected a post at each corner of the area in the manner and with the numbering required under Section 15 for the staking out of a mining claim;
- (c) write or place or cause to be written or placed upon each post
  - (i) the words "Boring Permit applied for" with his name and the letter of his permit, and where the staking out is done by a permit holder other than the applicant such permit holder shall write or place upon each post in addition thereto his name and the letter or number of his permit, and
  - (ii) the date of the staking out and a description of the area to be covered by the application;
- (d) furnish to the Minister not more than ninety days after the staking out is done a plan or diagram showing as nearly as possible the situation of the land covered by the application and a written description thereof; and
- (e) prove to the satisfaction of the Minister that he has paid or secured to the owner of the surface rights, if any, compensation for any injury or damage in accordance with Section 54.

**78.** A person to whom a boring permit is issued under Section 77 shall enter upon the area described in the permit before the expiration of two months from the date on which the permit was issued and during the term of the permit he shall ex-

Holder of  
permit to  
search for  
coal, etc.

pend on the land comprised therein in actual boring, sinking, driving or otherwise searching for coal, oil, natural gas or salt an amount not less than the sum of two dollars for every acre covered by the permit.

Renewal  
of permit.

**79.** The Minister may, upon proof being furnished satisfactory to him that all of the terms and conditions applying to a boring permit under this Act were complied with, grant upon the expiration of the permit or within ten clear days thereafter one renewal thereof for a period of one year from the expiration of the original permit, upon the payment by the applicant of a fee of one hundred dollars; and the renewal shall be made subject to the same terms and conditions referred to in subsection (3) and paragraph (e) of subsection (4) of Section 77 and Section 78 as if it was an original permit issued under Section 77.

Transfer  
of permit.

**80.—**(1) The holder of a boring permit or a renewal thereof may, with the consent of the Minister endorsed in writing upon the permit or the renewal, transfer in the prescribed form all of his rights in the permit or the land covered by it.

Rights of  
transferee  
of permit.

(2) Where a transfer of a permit or a renewal thereof is made in accordance with subsection (1) the transferee is entitled to all of the rights of the original holder under the permit during the unexpired term thereof.

Lease of coal,  
oil, natural gas  
or salt.

**81.—**(1) Where the holder of a valid boring permit proves to the satisfaction of the Lieutenant-Governor in Council that he has discovered coal, oil, natural gas or salt or any one or more of them in commercial quantities upon land covered by the permit, the Lieutenant-Governor in Council may subject to this Act authorize the Minister to issue to the holder of the permit a lease of the land covered by the permit or any portion thereof for a term of ten years at an annual rental of an amount equal to the sum of five dollars for every acre comprised in the lease; and the rental is payable in advance.

Lessee  
may work  
coal, etc.

(2) A person to whom a lease was issued under subsection (1) may, during the currency of the lease, enter upon the land comprised in the lease and thereon dig, bore, sink, drive or otherwise

search for and obtain, raise and remove coal, oil, natural gas and salt or any one or more of those substances.

(3) Where a lease is issued under subsection (1) all minerals and quarry materials on, in or under the land comprised in the lease are reserved to the Crown and a permit holder may, subject to this Act, go upon the land and thereon prospect and stake out a mining claim.

Minerals, etc., reserved to Crown.

(4) A permit holder may, subject to this Act, obtain a development licence or a mining lease on any land leased under subsection (1), or any person may obtain a quarry lease under Section 85, but where a licence or lease is issued there shall be reserved or excepted therefrom the coal, oil, natural gas and salt in, on or under the land concerned.

Licence, etc., respecting land leased under subsection (1).

(5) A lease shall not be issued under subsection (1) until a plan in triplicate or field-notes and descriptions made by a surveyor are filed in the Department showing that the survey required under Section 58 as a prerequisite to the issue of a development licence under Section 57 was made.

Requirements before lease issued.

(6) Every lease made under subsection (1) shall contain such conditions, stipulations and provisos, if any, as the Lieutenant-Governor in Council deems necessary or desirable and, in any event, shall contain the following conditions:

Conditions to be contained in lease.

- (a) The lessee shall expend an amount not less than the sum of two dollars for every acre comprised in the lease in obtaining coal, oil, natural gas or salt or any one or more of those substances from the land comprised in the lease, or in actual operations or works undertaken or made in good faith for that purpose.
- (b) The lease shall be forfeited upon the failure of the lessee to fulfil, perform and observe any of the covenants, conditions, provisos and stipulations contained in the lease, but the lessee shall be relieved from forfeiture for failure to pay rent by paying all arrears of rent within ninety days after it becomes due.

- (c) The lessee may, on application made at least three months before the determination of the lease, renew it for a further term of ten years at such rental as may at the time of renewal be prescribed by law, but the right of renewal herein contained does not give to the lessee any right to a further renewal.

Holder of boring permit or lease not entitled to timber.

**82.** The holder of a boring permit or lease relating to coal, oil, natural gas or salt and issued under this Act is not entitled to the timber upon the lands comprised in the permit or lease, but if lands are ungranted Crown lands he may, with the permission of the Lieutenant-Governor in Council and upon payment of such rates as may be prescribed, cut and use such timber or trees as may be necessary for his operations conducted on the land under the boring permit or lease.

Minister may issue permit.

**83.—(1)** The Minister may issue a permit to remove, take and carry away quarry materials which are in the possession of the Crown.

Form and contents of permit.

(2) A permit issued under this section

- (a) shall be in such form;
- (b) is subject to payment of such fees, rentals and royalties, if any;
- (c) is subject to such terms and conditions, if any; and
- (d) is in respect of such area,

as the Lieutenant-Governor in Council may prescribe and is for such term, not in excess of one year, as the Minister shall prescribe.

Permit not renewable.

(3) A permit issued under this section may not be renewed.

Department or agent of Government may remove material under certain conditions.

(4) Any department of the Government, or any agent of Her Majesty in right of Newfoundland authorized by the Lieutenant-Governor in Council, may without a permit issued under this section remove, take or carry away quarry materials that are in the possession of the Crown subject to the same terms and

conditions as the Lieutenant-Governor in Council may prescribe under paragraph (c) of subsection (2).

**84.**—(1) Where a permit is issued under Section 83 in error it may be cancelled by the Minister within sixty days after the date of the issue, and where the issue of a permit was obtained through fraud or false representation it may be cancelled by the Minister at any time.

Cancellation of permit.

(2) Where a permit is cancelled under subsection (1) any interested party may apply to a judge within thirty days after the date of cancellation and the decision of the judge is final and binding upon all parties.

Appeal from cancellation.

**85.**—(1) The Lieutenant-Governor in Council may at any time before the expiration of a permit issued under Section 83 issue to the holder of that permit a lease of any quarry materials covered by the permit, but no more than twelve acres of land shall be comprised in the lease and the lease shall be for such term not exceeding twenty-five years and subject to the payment of such rentals and royalties and the performance and fulfilment of such additional terms and conditions as the Lieutenant-Governor in Council may determine.

Quarry lease.

(2) A quarry lease may not be issued under this section except to the holder of a valid permit issued under Section 83 who before the permit expired filed with the Department a proper survey of the area applied for and that survey is subject to the approval of the Minister.

Restriction on issue.

**86.** A permit issued under Section 83 or a quarry lease issued under Section 85 does not convey any right to the minerals, coal, oil, natural gas or salt on, in or under the land comprised in the lease, or any exclusive right or privilege relating to any lake, river, spring, stream or other body of water on, passing through or adjacent to the land comprised in the lease.

Permit or lease does not convey any right to minerals, coal, oil, natural gas or salt.

Removal of quarry materials prohibited except under and in accordance with Act.

**87.** No person shall remove, take or carry away any quarry materials located on or in Crown Lands or any quarry materials the title to which is vested in the Crown wheresoever located, except under and in accordance with a permit or a quarry lease issued under Section 83 or 85.

Removal of rock, sand, gravel or clay from beaches prohibited.

**88.—(1)** Subject to subsections (2) and (3) of this section and to any grant, lease or licence from the Crown, no person shall remove, take or carry away any rock, sand, gravel or clay from any beach in the province as defined by paragraph (a) of subsection (4) of this section.

Permit to remove rock, etc.

(2) Subject to any grant, lease or licence from the Crown, the Minister may issue a written permit to remove, take and carry away rock, sand, gravel and clay or any of those substances from any beach in the province, as defined by paragraph (b) of subsection (4) of this section, for such purposes, in such quantity, for such period and subject to such further terms and conditions as may appear to him to be desirable.

Idem.

(3) The Lieutenant-Governor in Council may by order empower the Minister to issue a permit under subsection (2) in respect of any rock, gravel or sand or any of those substances that has been reserved under Section 11 and an order may be made from time to time under this subsection in respect of part or all of the beaches in the province.

Definition of "beach".

(4) For the purposes of

(a) subsection (1) of this section, the word "beach" means all lands in the province lying within a horizontal distance of one thousand feet from and within an elevation of fifty feet above ordinary low water mark of any body of tidal water; and

(b) subsections (2) and (3) of this section, the word "beach" means all lands in the province, other than lands which are privately owned, lying within a horizontal distance of one thousand feet from and within an elevation of fifty feet above ordinary low water mark of any body of tidal water.

**89.** All Crown lands which are not at any time after the passing of this Act held by any person under a valid certificate of record, permit, licence, lease or grant whether issued under this Act or any other Act or law are open for prospecting and staking out under this Act and are subject in all respects to the provisions of this Act.

Rights recognized for the purpose of this Act.

**90.—(1)** An action or any other proceeding relating to mines or quarries or to any matter or thing arising under this Act before or after the issue of a mining lease, a boring lease or a quarry lease or involving the interpretation of this Act or relating to the rights acquired or alleged to have been acquired under this Act or relating to any other matter or thing involving any right or claim under this Act shall not, subject to this Act, be taken in court unless the action or proceeding was first brought before a judge in chambers on originating summons.

Appeal.

(2) Where an action or proceeding is brought before a judge in chambers in accordance with subsection (1), the judge may either direct an action to be taken in or move the summons into court or determine the matter summarily.

Judge may direct action be taken in court or summarily.

(3) Where a judge determines the matter summarily under subsection (2) he may

Judge may make certain orders, etc., on summary hearings.

- (a) give directions for the conduct and carrying on, in any respect, of the action or proceeding before him, and in doing so he shall adopt the cheapest and most simple procedure in determining the questions raised before him, and shall give his decision on the real merits and substantial justice of the case;
- (b) order the evidence of any witness to be taken at any place, at such time and in such manner as he may deem fit;
- (c) in addition to hearing the evidence adduced by the parties, require and receive such other evidence as he may deem proper, and appoint a person to make an inspection of the property involved, and receive evidence, and act upon the report of the person so appointed, or

may himself view and examine the property involved, and give his decision upon such evidence or view and examination; and

(d) make any order as to costs.

Registration  
on further  
appeal.

(4) No appeal may, subject to this Act, be taken from any judgment or order made by a judge under this section, except with leave of the judge who handed down the judgment or made the order.

Leave to  
appeal from  
judgment.

(5) An application to a judge for leave to appeal from his judgment or order shall be made within fourteen days from the date of the judgment or order and the judge may refuse leave to appeal if he is of the opinion that the appeal has no substantial merits and would be vexatious or oppressive to any poor person who is a party.

Special leave.

(6) A party who is refused leave to appeal by a judge may apply to the court for special leave to appeal.

Regulations.

**91.**—(1) For the purpose of carrying into effect the provisions of this Act, the Lieutenant-Governor in Council may make such regulations as, in his opinion, are necessary or desirable for carrying out the spirit, intent and meaning of this Act in relation to matters for which no express provision is made or in respect of which only partial or imperfect provision is made, and may, in particular but without limiting the generality of the foregoing, prescribe in those regulations the fees to be paid under this Act and the forms to be used, where no express provision for such prescription is made in this Act, and may amend or revoke any regulations or orders made under any of the provisions repealed by Section 87 of the Act No. 87 of 1951 where there is no other provision for amending or revoking them.

Publications.

(2) Regulations made under subsection (1) shall be published in *The Newfoundland Gazette* and shall have effect from date of the publication or from such other date as may be specified in the regulations.

Offence and  
penalty.

**92.**—(1) Any person who contravenes or fails to comply with this Act or the regulations or any order made thereunder or who

interferes with any person in the discharge of his duties under this Act, the regulations or any order made thereunder is guilty of an offence and liable, on summary conviction, where no penalty is otherwise provided, to a fine not exceeding five hundred dollars and in default of payment to imprisonment not exceeding six months.

(2) The conviction of any person under this Act for failure to comply with any requirement or obligation referred to in subsection (1) does not operate as a bar to further prosecution for the continued failure of that person so to comply.

Continued  
offence.





## CHAPTER 73

### An Act Respecting Crown Royalties

1. This Act may be cited as The Crown Royalties Act. Short title.
  
2. Whenever in or under or by virtue of any Act of the Legislature or any Agreement made between the Lieutenant-Governor in Council and any person or Corporation or any Crown grant, lease, licence, concession or other arrangement of any kind there shall be or shall have been reserved to the Crown any royalty or payment in the nature of a royalty or percentage upon the value whether gross or net of or upon the profits whether gross or net derived from any minerals, timber, power or other product or thing or commercial operation of any kind (all of which are hereinafter referred to as royalty) it shall be deemed to be a term of such Act, agreement, grant, lease, licence, concession or other arrangement unless otherwise therein expressly stated that the mineral, timber, power or other product or thing shall be sold or disposed of at or about the current commercial market value of the same and that the sales shall be made and the operations carried on upon ordinary and reasonable commercial terms and conditions so as to produce to the Crown such royalty as shall be fair and proper under all the circumstances, and if the royalty be upon net profits or returns or values, that the charges deducted from the gross in order to arrive at the net profits, returns or values shall be ordinary fair and reasonable and according to commercial practice. Respecting royalties and payments under Acts of Legislature or agreements with government.
  
3. Where any such royalty arises out of any land, mineral, timber or water power it shall be deemed to attach to and run with the land, mineral, timber or water power in the hands of every person or corporation to whom the same may be assigned, Royalties shall attach to and run with land, etc.

conveyed or transferred or may by any means come, and every person or corporation getting, making, earning or receiving the values, products or profits, shall be liable to pay and shall pay the same arising during his ownership or operation: Provided that if any enterprise shall be divided into parts by way of assignment, transfer, conveyance or otherwise, it shall be lawful for arbitrators appointed as hereinafter provided to apportion the royalty and assign to the several owners or operators of parts of the enterprise the portion of the royalty which shall be borne by them respectively.

Arbitration in respect of royalties payable to Crown.

**4.** In any case where royalty shall be payable to the Crown it shall be lawful for the Lieutenant-Governor in Council at any time or from time to time to direct that an arbitration be held before three arbitrators, one to be appointed by the Lieutenant-Governor in Council, one by the party liable to pay royalty and the third by the Supreme Court of Newfoundland on the application of the Attorney General; and the royalty payable in the case shall be the royalty found to be due by the award of the arbitrators or any two of them, which award shall be subject to review by the Supreme Court on the application of either party: Provided that if the party liable to pay such royalty does not appoint his arbitrator within one month after notice so to do, this arbitrator may also be appointed by the Supreme Court on application of the Attorney General.

Arbitrators may disregard certain schemes, devices, etc., in certain cases.

**5.** Any contract, scheme, arrangement or device which in the opinion of such arbitrators as set forth in their award is designed or tends improperly or unnecessarily to reduce the amount of royalty payable to the Crown shall for the purpose of this Act be deemed to be of no effect and royalty shall be ascertained and paid as if such contract, scheme, arrangement or device did not exist.

Judicature Act and Public Enquiries Act.

**6.** For the purposes of such an arbitration the arbitrators shall have all the powers conferred upon arbitrators by The Judicature Act and all the powers conferred upon commissioners under The Public Enquiries Act.

**7.** This Act shall apply to all royalties under any Act, agreement, Crown grant, lease, licence, concession or other arrangement whether heretofore or hereafter passed, made or given.

Application of  
Act to all  
royalties.

**8.** All royalties shall be deemed to be debts due to the Crown and may be recovered by suit in the Supreme Court in the name of the Attorney General.

Recovery of  
royalties.





## CHAPTER 74

### An Act Respecting Death Duties

1. This Act may be cited as The Death Duties Act. Short title.
  
2. In this Act "Assessor" means the Assessor of Income Tax under the Income Tax Acts now or hereafter in force. Interpretation.
  
3. There shall be charged and paid: Death Duties to be paid; exceptions.
  - (a) Upon the estates of all persons dying between the 8th day of September, 1914, and the 31st day of August, 1934, the duties specified in the First Schedule hereto: Provided that no duty shall be chargeable upon
    - (i) the estate of a person who died while on active service as a member of the Royal Newfoundland Regiment or of the Newfoundland branch of the Royal Naval Reserve during the war of 1914 - 1918,
    - (ii) the estate of a person being a native of Newfoundland, or who was at the outbreak of the war of 1914 - 1918 domiciled in Newfoundland, who died while on active service in such war in any of His Majesty's naval or military forces, including Dominion or Colonial forces.
  
  - (b) Upon the estates of all persons dying on or after the first day of September, 1934, and before the first day of June, 1948, the duties specified in the Second Schedule hereto: Provided that no duty shall be chargeable upon
    - (i) the estate of any member of the fighting forces of His Majesty or of any state allied with His Majesty in the World War 1939 - 1945, who died on active

service or within twelve months of wounds inflicted or disease contracted while on active service,

- (ii) the estate of any member of the Mercantile Marine on any British or allied ship who died as a result of wounds received or exposure or disease incurred as a result of enemy action within twelve months after such action:

Provided that the amount of Death Duties payable upon the estates of all persons dying on or after the twenty-first day of November, 1939, and before the thirtieth day of November, 1940, shall be increased by ten per centum of the amounts chargeable under the Second Schedule of this Act; and the amount of Death Duties payable upon estates certified to be of a value of less than five thousand dollars of all persons dying on or after the thirtieth day of November, 1940, and before the first day of June, 1948, shall be increased by ten per centum of the amounts chargeable under the Second Schedule of this Act; and the amount of Death Duties payable upon estates certified to be of a value of five thousand dollars or over of all persons dying on or after the thirtieth day of November, 1940, and before the first day of June, 1948, shall be increased by twenty-five per centum of the amount chargeable under the Second Schedule of this Act.

- (c) Upon the estates of all persons dying on or after the first day of June, 1948, the duties specified in the Third Schedule hereto.

Definition  
of estate.

**4.—(1)** For the purposes of this Act the estate of a deceased person shall include

- (a) all property in this province of whatsoever description belonging to that person, whether moveable or immovable, and any interest in such property whether expectant or contingent held by him at his death;
- (b) any such property given by or passing from the deceased person as a *donatio mortis causa*;
- (c) any such property passing under any disposition made by the deceased person and purporting to operate as a

*donatio inter vivos*, unless the disposition was made at ant or contingent held by him at his death;

- (d) any such property passing under any disposition or by reason of any act of the deceased person which was intended to operate at or after his death, or has the effect of so operating;
- (e) any such property which by any act or disposition of the deceased person was so transferred, vested or arranged that his ownership or beneficial interest therein or in any part thereof, passed or accrued by survivorship upon his death;
- (f) any such property which has passed to any one within one year prior to the death of the deceased person for the purpose of dividing the same after the death of the deceased person amongst his heirs or any of them;
- (g) any limited interest in such property, whether or not such interest was or is to be determined on the death;
- (h) any property, including money in banks or other institutions, held in the joint names of the deceased and one or more persons, and payable to or passing to the survivor or survivors, or the portion of such joint property which is so payable or which passes as aforesaid; and
- (i) all insurance money payable upon the death of such deceased person to a preferred or ordinary beneficiary notwithstanding anything contained in Section 35 of The Life Insurance Act, chapter 238 of The Revised Statutes of Newfoundland, 1952: Provided that insurance money to an amount not exceeding twenty thousand dollars payable to a preferred beneficiary shall not form part of the estate of such deceased person, where such preferred beneficiary is the widow of such deceased person or his dependent child under the age of twenty years at the date of his death or his dependent child who is of or over the age of twenty years and is incapable of self-support by reason of physical or mental infirmity. In this paragraph the expressions "insurance money", "preferred beneficiary", and "ordinary beneficiary" shall have the meanings assigned to them

in The Life Insurance Act, chapter 238 of The Revised Statutes of Newfoundland, 1952:

Provided that the provisions of this subsection shall apply only to estates of persons dying on or after the first day of June, 1948.

(2) The account for the Treasury provided by Section 7 of this Act shall contain all necessary particulars of and include all the property of every description comprised in this section.

(3) For the purposes of this Act, the said estate shall be held to be the estate in respect of which Letters of Probate or of Administration are applied for.

Notification to Assessor by depositholder.

(4) Wherever any bank, trust company, insurance company or other corporation holding money on deposit for the public or letting safety deposit boxes becomes aware of the death of any person entitled to any such account jointly with any other person or persons, or of the death of any person holding or renting any safety deposit box, whether alone or jointly with any other person or persons, it shall be the duty of the manager of the corporation or branch office of such corporation at which the account or safety deposit box is to notify the Assessor in writing forthwith of the existence of such account or safety deposit box.

Penalty.

(5) If notice be not given to the Assessor in accordance with the foregoing subsection the said corporation on proof that it was aware of the death as aforesaid shall be liable on summary conviction to a fine not exceeding ten dollars for each offence.

Shares and debentures of companies incorporated in Newfoundland.

5.—(1) Subject as hereinafter provided, shares in and debentures of a company shall for the purposes of this Act be deemed to be property in this province, notwithstanding that the deceased holder of those shares or debentures was a resident or domiciled outside this province at the time of his death.

Restriction on transfer.

(2) Subject as hereinafter provided, until payment of the duty is made or satisfactory security has been given to the Assessor for payment thereof, the company shall not permit the transfer in its register of any shares or debentures registered in the name of the deceased person at the date of his death, except in the case of shares or debentures in respect of which the Assessor has certified his satisfaction that though still registered at that

date they have been *bona fide* sold or disposed of by the deceased person:

Provided that nothing in this section contained shall be deemed to impose any obligation or restriction on a company in respect of share warrants or debenture warrants issued to bearer; or in respect of debentures registered in a register kept in any part of the United Kingdom of Great Britain and Northern Ireland; and that nothing in this Act contained shall apply to debentures of a company registered in the name of a person not domiciled in this province in a register kept in any part of the United Kingdom of Great Britain and Northern Ireland or render the estate of a deceased person who was domiciled outside this province liable for death duties in this province in respect of such debentures; and that where the value of shares registered in the name of a deceased shareholder who was domiciled outside this province shall be less than the sum of one thousand dollars, the company may permit a transfer of such shares in its register on notifying the Assessor of the death of such deceased shareholder.

(3) In the event of a company's permitting a transfer of any shares contrary to the provisions of this section it shall be liable to pay to the Assessor the death duties, if any, for which the estate of the deceased holder of the shares shall be liable in respect thereof but may recover the same from the estate of the deceased shareholder.

Penalty.

(4) Every company shall as soon as there shall come to its knowledge the death of any holder resident or domiciled outside this province of its shares or debentures except debentures registered or entered in a register kept in any part of the United Kingdom of Great Britain and Northern Ireland, transmit to the Assessor a written notice of the death of the deceased shareholder or debenture holder stating the shares or debentures in that company held by the deceased at the date of his death; and for any failure or neglect to transmit such notice, the company shall be liable to a penalty not exceeding one hundred dollars.

Notice to Assessor of death of shareholder.

(5) "Company" shall mean any company incorporated or registered under the law for the time being of this province relating to the incorporation or registration of companies,

Definition.

Personal property; allowance for duties paid abroad.

**6.**—(1) All personal property of a deceased person who was domiciled in Newfoundland at the time of his death, whether situate within or without Newfoundland, shall be deemed to be included in his estate for the purposes of this Act.

(2) Notwithstanding any of the provisions of this Act hereinbefore contained, where any property passing on the death of the deceased is situate outside Newfoundland and is subject to duty in the country in which it is situate the amount of such duty when actually paid shall be deducted from the duty payable or refunded out of the duty paid under this Act in respect of the same item.

Accounts for Assessor.

**7.** In addition to the affidavits and inventories at present required from a person applying for Letters of Probate or Administration there shall be delivered to the Assessor an account, verified by oath and in the form prescribed by the Minister of Finance, of the particulars of the estate for or in respect of which Letters of Probate or of Administration are applied for.

Enquiries by Assessor; certificate.

**8.** It shall be lawful for the Assessor, upon receipt of such account, to cause to be made any enquiries in respect of the same, or of the estate in respect of which Letters of Probate or of Administration are applied for, which he may deem necessary, and for such purpose he may summon and examine witnesses upon oath and require the production of any papers or documents. The Assessor shall certify the value of the said estate after making allowance for debts incurred during the lifetime of the deceased, and due and payable at the time of his death, and upon such certified value the duties specified in the appropriate Schedule hereto shall be paid.

Payment of or security for duty.

**9.** The applicant for Letters of Probate or of Administration shall thereupon pay to the Minister of Finance the duties due, together with interest thereon, at the rate of six dollars per centum per annum, from the date of the death of the deceased, or shall give security with two or more sufficient sureties approved by the Assessor, by a bond to Her Majesty the Queen, Her Heirs and Successors, in double the amount of the said duties, for the due and full payment of the amount of said duties, within six calendar months or any less period, and of the interest for the same, at the rate of six dollars per centum per annum,

during the period from the death of the deceased until payment: Provided that the Minister of Finance may, in lieu of payment on the maturity of such bond, accept a new bond with sufficient surities for the payment of such duties and interest at such time as he shall determine and cause to be specified in such bond. Such last named bond shall also bear interest at the rate of six dollars per centum per annum to the date of payment.

**10.**—(1) In any case where in the opinion of the Assessor the estate is such that its true value for death duty cannot be accurately ascertained at the time of application, the Assessor may require the applicant to furnish such affidavits, accounts and inventories as he may direct showing the value of the estate, as far as it can at that time be ascertained, and shall calculate the amount of death duty apparently due thereon, with an allowance for any increase in such value which in his opinion may possibly or probably appear on a more complete valuation.

Procedure where value not immediately ascertainable.

(2) The applicant shall thereupon at the option of the Assessor either pay to the Minister of Finance the duties due and give security covering the allowance in the preceding subsection mentioned or give security, as hereinbefore provided, for double the amount of the duties due, together with the allowance hereinbefore mentioned and for interest; and such bond shall be for such period as the Assessor may deem necessary for the ascertainment of the true value of the estate, and may be extended as in Section 9 provided.

Payment or security.

(3) Upon such payment or the giving of such security the Assessor may issue a provisional certificate upon which Letters of Probate or of Administration may be granted by the Supreme Court under Section 13 hereof, and upon production by the Executor or Administrator within the time appointed by the bond of complete affidavits, accounts and inventories satisfactory to the Assessor and upon payment of any further duty found thereon to be due with interest as aforesaid the Assessor may grant a final certificate. If upon final accounting it appears that the true duty due is less than that provisionally paid, the difference shall be refunded to the executor or administrator.

Issue of provisional certificate.

(4) Appeal to the Supreme Court under Section 12 hereof shall lie from the final certificate but not from the provisional cer-

Appeal.

tificate. If the applicant shall fail to produce satisfactory final affidavits, accounts and inventories within the time appointed, the Assessor may assess the estate for death duty at such value as he may deem proper and death duties shall be payable on the value as so fixed by him.

Unpaid duties to be a debt due to Her Majesty.

**11.** All duties when unpaid shall be a debt due to Her Majesty, Her Heirs and Successors, from the estate of the deceased, and shall be paid in preference to and before any other debt whatsoever due from the same estate, and may be sued for and recovered by an action in the name of the Minister of Finance in any court having jurisdiction in cases of debt or damages to the amount of the same.

Appeal to Supreme Court.

**12.** If the applicant for Letters of Probate or of Administration is dissatisfied with the value certified by the Assessor as aforesaid, he may appeal therefrom to the Supreme Court, or a judge thereof, by giving notice within three days from the date of such certifying. The court or judge shall hear the matter summarily and confirm or vary the said value, and the judgment of the Court or judge shall be final as to such value.

Letters of Probate or Administration not to be granted without certificate; except on Circuit.

**13.** No Letters of Probate or of Administration shall be granted by the Supreme Court or a judge thereof without the production to it or him of a certificate of the Assessor that all the duties have been paid or sufficient security given for their payment: Provided that where application for Letters of Probate or of Administration is made to the Supreme Court on Circuit or a judge thereof, the said Court or judge may grant such letters upon security being given to its or his satisfaction for payment of the duties payable thereon. The bond for payment of the said duties, and the necessary affidavits as to the value of the estate to be administered, shall be forthwith forwarded by the clerk of the court to the Assessor. If the said duties are not paid within three months from the date of the granting of the said Letters, they shall be revoked by the court or judge upon application by the Assessor. No acts done or deeds or agreements executed under or by virtue of such Letters of Probate or of Administration shall be valid unless and until the said duties are paid.

**14.** Any estate for or in respect of which Letters of Probate or of Administration are not obtained within one year from the death of the deceased, unless the obtaining thereof is delayed by litigation or other cause over which the applicant had no control in respect of the same, shall be liable to double the amount of the duties chargeable, and letters of administration may be granted to the said Assessor who shall be entitled to retain double the amount of said duties for Her Majesty.

Penalty where Letters not taken out within one year.

**15.—**(1) Subject to subsection (2), this Act is suspended.

Suspension of Act.

(2) This Act may be brought back into force by proclamation of the Lieutenant-Governor in Council with effect from a date to be prescribed in that proclamation.

Proclamation.

FIRST SCHEDULE.

First Schedule.

Estates certified of less than \$1,000 shall pay no duties.

Estates certified to be of a value—

Of \$	1,000 and up to \$	2,500 shall pay	1 per cent
Of	2,500 and up to	5,000 shall pay	2 per cent
Of	5,000 and up to	25,000 shall pay	3 per cent
Of	25,000 and up to	50,000 shall pay	4 per cent
Of	50,000 and up to	100,000 shall pay	5 per cent
Of	100,000 and up to	200,000 shall pay	6 per cent
Of	200,000 and up to	350,000 shall pay	7 per cent
Of	350,000 and up to	500,000 shall pay	8 per cent
Of	500,000 and up to	750,000 shall pay	9 per cent
Of	750,000 and up to	1,000,000 shall pay	10 per cent
Of	1,000,000 and over	shall pay	11 per cent.

## SECOND SCHEDULE.

Estates certified of less than \$1,000 shall pay no duties.

Estates certified to be of a value—

Of \$	1,000 and up to \$	2,500 shall pay	1 per cent
Of	2,500 and up to	5,000 shall pay	2 per cent
Of	5,000 and up to	25,000 shall pay	3 per cent
Of	25,000 and up to	50,000 shall pay	4 per cent
Of	50,000 and up to	70,000 shall pay	5 per cent
Of	70,000 and up to	100,000 shall pay	6 per cent
Of	100,000 and up to	130,000 shall pay	7 per cent
Of	130,000 and up to	160,000 shall pay	8 per cent
Of	160,000 and up to	200,000 shall pay	9 per cent
Of	200,000 and up to	250,000 shall pay	10 per cent
Of	250,000 and up to	300,000 shall pay	11 per cent
Of	300,000 and up to	350,000 shall pay	12 per cent
Of	350,000 and up to	425,000 shall pay	13 per cent
Of	425,000 and up to	500,000 shall pay	14 per cent
Of	500,000 and up to	600,000 shall pay	15 per cent
Of	600,000 and up to	750,000 shall pay	16 per cent
Of	750,000 and up to	1,000,000 shall pay	17 per cent
Of	1,000,000 and up to	1,250,000 shall pay	18 per cent
Of	1,250,000 and up to	1,500,000 shall pay	19 per cent
Of	1,500,000 and up to	2,000,000 shall pay	20 per cent
Of	2,000,000 and over	shall pay	25 per cent.

## THIRD SCHEDULE.

## Third Schedule.

Estates certified of less than \$5,000 shall pay no duties.

Estates certified to be of a value—

Of	\$	5,000 and up to	\$	10,000 shall pay	1 per cent
Over		10,000 and up to		20,000 shall pay	2 per cent
Over		20,000 and up to		30,000 shall pay	4 per cent
Over		30,000 and up to		45,000 shall pay	6 per cent
Over		45,000 and up to		60,000 shall pay	8 per cent
Over		60,000 and up to		75,000 shall pay	10 per cent
Over		75,000 and up to		100,000 shall pay	12 per cent
Over		100,000 and up to		125,000 shall pay	14 per cent
Over		125,000 and up to		150,000 shall pay	16 per cent
Over		150,000 and up to		175,000 shall pay	18 per cent
Over		175,000 and up to		200,000 shall pay	20 per cent
Over		200,000 and up to		225,000 shall pay	22 per cent
Over		225,000 and up to		250,000 shall pay	24 per cent
Over		250,000 and up to		300,000 shall pay	26 per cent
Over		300,000 and up to		400,000 shall pay	28 per cent
Over		400,000 and up to		600,000 shall pay	30 per cent
Over		600,000 and up to		800,000 shall pay	32 per cent
Over		800,000 and up to		1,000,000 shall pay	34 per cent
Over		1,000,000 and up to		1,250,000 shall pay	39 per cent
Over		1,250,000 and up to		1,500,000 shall pay	44 per cent
Over		1,500,000 and up to		2,000,000 shall pay	49 per cent
Over		2,000,000		shall pay	54 per cent.





## CHAPTER 75

### An Act Respecting Debentures of the Province

- 1.** This Act may be cited as The Debentures of the Province Act. Short title.
- 2.** All outstanding debentures of the province shall be assignable and transferable in the mode, and the principal and interest thereof respectively shall be payable at the times and in the manner prescribed in and by the said several debentures. And in case any such debentures do not prescribe the mode of transfer or assignment, the principal and interest shall be payable to the endorsee or assignee thereof: Provided that in case of debentures issued without limit of time for repayment, or forming part of the consolidated debt of the province, the same may be called in and paid off at any time after the Government shall have given twelve months' notice in *The Newfoundland Gazette*, of its intention to redeem the same; and interest on such debentures shall cease at the time specified in such notice. Debentures assignable and may be paid off upon 12 months' notice under certain conditions.
- 3.** If and when any person or persons shall claim to be the owner or owners of any debenture or debentures of the province alleged to have been lost or destroyed, it shall be lawful for the Minister of Finance to summon before him any party or witness and to require such party or witness to give evidence on oath, (or on solemn affirmation), orally or in writing, and to produce such documents and things as he shall deem requisite to the full investigation of such claim. The Minister of Finance shall have the same power to enforce the attendance of witnesses and to compel them to give evidence as is vested in any court of law, in civil cases; and any wilfully false statement made by any such witness on oath or solemn affirmation shall be a misdemeanour punishable in the same manner as wilful and corrupt perjury. Lost or destroyed debentures.
- 4.** Upon the making of a claim as aforesaid by any person, and upon application for a new debenture or debentures, the Notice to be published.

Minister of Finance shall give notice for at least two months, which notice shall be advertised in at least two daily papers, that claim has been made to the ownership of certain debentures, and that upon a date named he will take evidence thereupon under the provisions of this Act.

Report by  
Minister of  
Finance.

5. If satisfied by enquiry that the said debenture or debentures has or have been lost or destroyed, the Minister of Finance shall, in the manner provided by Section 4, cause public notice to be given that he will report to the Lieutenant-Governor in Council in favour of the issue of a new debenture or debentures to the owner of the debenture or debentures alleged to have been lost or destroyed, specifying the number, date and amount thereof, so far as possible, unless cause to the contrary be shown to him within two months.

Issue of new  
debentures.

6. Upon a report of the Minister of Finance that in his opinion the said debenture or debentures has or have been lost or destroyed, the Lieutenant-Governor in Council, if satisfied that the said debenture or debentures has or have been lost or destroyed, and upon the furnishing of adequate and satisfactory security by bond in twice the amount of the lost or destroyed debenture or debentures, may cause a new debenture or debentures for the amount or amounts or its or their equivalent, to be issued in the form of the Schedule hereto.

Discovery of  
alleged lost or  
destroyed  
debentures.

7. If, after the issue of a new debenture or debentures in place of a debenture or debentures alleged to have been lost or destroyed, such last-named debenture or debentures be produced by or on behalf of a *bona fide* owner thereof, it shall be held to be valid and effectual to all intents and purposes, and the value thereof shall thereupon be recoverable from the securities to the bond taken under Section 6 upon the issuing of a new debenture or debentures.

Payment of  
lost or  
destroyed  
debentures  
which have  
matured.

8. If the debentures alleged to have been lost or destroyed shall have matured or become payable, or been called in for payment, then upon such proceedings being taken as are provided by this Act in proof of the loss or destruction of the said debenture, and upon the furnishing of security of the nature and to the amount provided by Section 6, the Lieutenant-Governor in Council shall have power and he is hereby authorized to pay to

the owner of the said debenture so alleged to have been lost the amount due or payable thereunder, in the same manner as if the said debenture were delivered up; and in the event of such debenture being afterwards produced by or on behalf of a *bona fide* owner thereof, the provisions of Section 7 shall apply and take effect.

9. The Lieutenant-Governor in Council may, upon the application of any person who is the holder of a debenture or debentures of this province for the sum of two hundred dollars or upwards, or the equivalent of any such sum in sterling money of Great Britain, issued under any Act of the Legislature, and upon the surrender of any such debenture or debentures, cause to be issued in place thereof other debentures for less amounts but aggregating in all to the amount of the said original debenture or debentures; and such new debentures shall be in the form and subject to the conditions and terms of the said original debenture or debentures and thereupon such original debenture or debentures shall be cancelled: Provided that no new debenture shall be issued for a less sum than one hundred dollars, or the equivalent thereof in such sterling money of Great Britain, calculating the value of a British sovereign to be four dollars and eighty-six cents and two-thirds of a cent of the currency of Newfoundland.

Issue  
of debentures  
for less  
amounts.

10. The Lieutenant-Governor in Council shall have power to make rules and regulations for the purposes of this Act and for greater security; and such rules and regulations, when published in *The Newfoundland Gazette*, shall have the force and effect of law as fully as though enacted herein.

Lieutenant-  
Governor in  
Council may  
make rules.

Schedule.

## SCHEDULE

I,..... Minister of Finance, do hereby certify that by virtue of The Debentures of the Province Act, I have received by way of loan from.....the sum of..... bearing interest at the rate of four per centum per annum, payable half-yearly on the first day of January and the first day of July in each year until the first day of January, A.D., .....: Provided that it shall be optional with the Government, after the first day of January, A.D.,.....to pay off the same, upon giving twelve months' notice of such intention.

Given under my hand at St. John's the            day of            ,  
A.D., 19     .

*Minister of Finance.*

Countersigned,

*Minister of Provincial Affairs.*



## CHAPTER 76

### An Act to Make Provision for the Award of Pensions in Certain Cases

**1.** This Act may be cited as The Deferred Pensions Act and shall be read with The Civil Service Act, The Memorial University (Pensions) Act, and The Education (Teachers' Pensions) Act. Short title.

**2.** In this Act, Interpretation.

- (a) "employee of the Board of Regents" means an employee of the Board of Regents of the Memorial University of Newfoundland to whom The Memorial University (Pensions) Act applies;
- (b) "established civil servant" means a civil servant in respect of whom a civil service certificate has been issued under The Civil Service Act;
- (c) "member of the Constabulary" includes a commissioned and a non-commissioned officer and a constable of The Constabulary Force of Newfoundland;
- (d) "Minister" means the Minister of Finance;
- (e) "pensionable service" means service which may be taken into account under the relevant Act in determining whether a person referred to in subsection (1) of Section 3 has qualified for the award of a pension, allowance or gratuity and the amount thereof;
- (f) "Ranger" includes a commissioned and a non-commissioned officer, and a constable of the Newfoundland Rangers established by The Newfoundland Ranger Act, 1935, the Act No. 37 of 1935, now repealed; and

- (g) "teacher" includes a teacher to whom The Education (Teachers' Pensions) Act applies, and a teacher referred to in Section 28 of that Act.

Award of pensions.

**3.—(1)** Where at any time from the first day of April, A.D., 1949, a person who is employed as an established civil servant, an employee of the Board of Regents, a teacher, a member of the Constabulary, or a Ranger retires for the purpose of contesting an election or a by-election for the return of members or a member to the Parliament of Canada or to the Legislature of the province and he is not eligible for the award of a pension or a gratuity on retirement and thereafter he

- (a) attains the age which if he was then so employed would render him liable to retirement;
- (b) suffers a mental or physical incapacity which if he was then so employed would render him liable to retirement; or
- (c) dies,

a pension, allowance or gratuity shall subject to this Act be awarded to or in respect of him under the relevant statute as if he had not retired from such employment and was so employed upon the happening of any of the events referred to in paragraphs (a), (b) and (c): Provided that in determining whether a pension, allowance or gratuity may be awarded to or in respect of such person and the amount thereof the only service which may be taken into account is service which would have been counted as pensionable service at the date of his actual retirement, if he had been eligible then for the award of a pension.

(2) A pension, allowance or gratuity may not be awarded under subsection (1) unless within two years after he contested an election, if he was not elected, or within two years after he ceased to be a member of the Parliament of Canada or of the Legislature of the province, if he was elected, the person to or in respect of whom it is proposed to make the award notified the Minister in writing that he desired immediate reinstatement in the employment from which he retired and was not within three months after the date of such notice offered reinstatement.

ment in such employment not lower in rank, salary and emoluments than the post from which he retired, but this subsection shall not apply to any person in respect of whom any of the events referred to in paragraphs (a), (b) and (c) of subsection (1) occurs before the expiration of any such period of two years.

(3) The award of a pension, allowance or gratuity under subsection (1) to or in respect of any person who retired from employment, as a member of the Board of Regents, or as a teacher is subject to the condition that all premiums payable in respect of any pensionable service counted for the purpose of determining whether a pension, allowance or gratuity should be awarded to or in respect of him and the amount thereof were paid by that person and have not been refunded to him or, if refunded, have been paid by him again with interest to the date of payment at the rate of three per centum per annum.

(4) Where a person referred to in subsection (1) retired from the Constabulary or the Ranger Force the question whether a pension or gratuity shall be awarded to or in respect of him, shall be determined, and the amount of the pension or gratuity, if awarded, shall be calculated, in accordance with The Civil Service Act.

4.—(1) In calculating the amount of the pension, allowance or gratuity to be awarded under this Act,

Calculation  
of pension.

- (a) where the relevant statute prescribes that the annual salary or the average annual salary during a number of years immediately preceding retirement shall be taken as a factor in such calculation, there shall be substituted therefor the salary or the average annual salary, as the case may be, paid in the post for the same number of years immediately preceding the date from which the pension shall be payable; and
- (b) where the relevant statute prescribes that the annual salary or the average annual salary paid during a number of years of pensionable service, whether selected by the pensioner or not, shall be taken as a factor in such calculation, the pensioner may select all or any part of those years from the period between the date of his

retirement and the date from which the pension shall be payable.

Idem.

(2) Where by virtue of the operation of subsection (1) or by reason of a selection made pursuant to that subsection, the salary paid during any period after the pensioner retired from a post is a factor in the calculation of his pension and the post did not exist, during that period or any part thereof, there shall be substituted for that salary, the salary paid in a post which existed during that period or part thereof, as the case may be, and which, in the opinion of the Lieutenant-Governor in Council, most nearly corresponds to the post from which the pensioner retired.

Certain employment to be counted.

**5.** Where, during any period occurring after the thirty-first day of March, A.D. 1949, a person was employed as an executive officer of any organization or body, whether incorporated or unincorporated, which during the greater part of his employment derived the major part of its income from funds provided by the Legislature, he shall, for all of the purposes of this Act, be dealt with, as if he had been employed as an established civil servant during that period.

Sections 4 and 5 to have full effect.

**6.** Sections 4 and 5 shall have full effect notwithstanding anything to the contrary contained in Sections 2 and 3.

Accelerated pension.

**7.—(1)** Where a teacher retired, whether before or after the enactment of this section, for the purpose of contesting an election or a bye-election referred to in subsection (1) of Section 3 and he had at the time he so retired done not less than thirty (30) years' pensionable service, he may elect at any time thereafter to receive a pension under this Act when the addition of the number of the years of his pensionable service to the number of the years of his age gives a sum not less than ninety-two, if he complies with the conditions prescribed in subsections (2) and (3) of this section.

Payment of additional premiums.

(2) Every person who exercises an election under subsection (1) shall pay into the Consolidated Revenue Fund a sum of money equal to the sum of the premiums he would have been required to pay if he was employed as a teacher during the period from and including the date of his retirement from service as a teacher to and including the date when the addition of the

number of the years of his pensionable service as a teacher to the number of the years of his age gives a sum equal to ninety-two.

(3) Interest shall be payable on every sum of money payable under subsection (2) at the rate of three per centum (3%) per annum compounded yearly and the interest shall run to and including the date of payment from and including the date when each of the amounts comprised in such sum would have been payable as a premium, if the person paying the interest had been employed as a teacher during the period when the interest runs.

Compound  
interest.

(4) Notwithstanding the provisions of

Payment  
of pension.

(a) subsection (1) of Section 3 relating to the time when a pension may be awarded; or

(b) subsection (2) of that section,

a pension calculated in accordance with the formula prescribed in subsection (1) of that section and Sections 4 and 5 shall, subject to this section and subsection (3) of Section 3, be awarded to every person who validly exercises an election under and complies with the provisions of this section, and the pension shall be awarded at and payable from the date when the addition of the number of years of the pensionable service of that person to the number of the years of his age gives a sum equal to ninety-two or the date he exercised his election, whichever is the later date.





## CHAPTER 77

### An Act Respecting Dentistry and Dental Surgery in the Province

1. This Act may be cited as The Dental Act.
2. In this Act
  - (a) "Association" means The Newfoundland Dental Association established by subsection (1) of Section 4;
  - (b) "Board" means The Newfoundland Dental Board referred to in Section 12;
  - (c) "Dentistry" or "Dental Surgery" means any professional service usually performed by a dentist or dental surgeon and includes
    - (i) the diagnosis or treatment of, and the prescribing treating or operating for, the prevention, alleviation or correction of any disease, pain, deficiency, deformity, defect, lesion, disorder or physical condition of, in or from any human tooth, associated structure or tissue or any injury thereto,
    - (ii) the making, producing, reproducing, constructing, fitting, furnishing, supplying, altering or repairing or prescribing or advising the use of any prosthetic denture, bridge, appliance or thing for any of the purposes referred to in subparagraph (i), or to replace, improve or supplement any human tooth, or to prevent, alleviate, correct or improve any condition upon or in connection with any human tooth, associated structure or tissue, or in the treatment of any condition thereof, and
    - (iii) the taking or making, or the giving of advice or assistance or the providing of facilities for the

Short title.

Interpretation.

taking or making, of any impression, bite, cast or design preparatory to, or for the purpose of or with a view to, making, producing, reproducing, constructing, fitting, furnishing, supplying, altering or repairing of any such prosthetic denture, bridge, appliance or thing;

- (d) "disciplinary committee" means the disciplinary committee referred to in Section 33;
- (e) "Executive Committee" means the Executive Committee of the Association referred to in subsection (4) of Section 4;
- (f) "Member" means a member in good standing in the Association and whose name appears on the Register;
- (g) "Minister" means the Minister of Health;
- (h) "practice of Dentistry" or "practice of Dental Surgery" includes any single act referred to in paragraph (c);
- (i) "Register" means the Dental Register referred to in Section 22; and
- (j) "Registrar" means the Registrar elected under Section 16.

#### ADMINISTRATION.

Administration. **3.** The Minister is charged with the administration of this Act.

#### THE NEWFOUNDLAND DENTAL ASSOCIATION.

Association constituted. **4.—(1)** Subject to this Act, every person whose name appears, at the date of the coming into force of this Act, on the Dental Register kept pursuant to Section 8 of The Dental Act, chapter 57 of The Revised Statutes of Newfoundland, 1952, and all persons hereafter registered in the Register under the provisions of this Act are hereby incorporated, created and constituted a body

corporate under the name "The Newfoundland Dental Association".

(2) The property and assets of the Dental Board of Newfoundland established under The Dental Act, chapter 57 of The Revised Statutes of Newfoundland, 1952, shall as from the date of the coming into force of this Act become the property of the Association and shall be vested in it, and all liabilities of the said Dental Board of Newfoundland as of such date shall become liabilities of the Association and shall be paid and satisfied by it.

Certain property vested in the Association.

(3) The Association shall, as soon as reasonably possible after the coming into force of this Act, acquire all the property and assets of the Newfoundland Dental Society, a corporation registered as a limited association under Section 253(1) of The Companies Act.

Association to acquire property and assets of the Newfoundland Dental Society.

(4) The Association shall establish an Executive Committee consisting of such persons as the Association may determine.

Executive Committee.

(5) Notwithstanding anything contained in this Act, until the Executive Committee is established under subsection (4) and for thirty days thereafter but no longer, the members of the Dental Board of Newfoundland established by The Dental Act, chapter 57 of The Revised Statutes of Newfoundland, 1952, in office immediately before the coming into force of this Act shall have the powers and carry out the functions and duties of the Executive Committee under this Act.

Pending establishment of Executive Committee.

**5.—**(1) Section 20 of The Interpretation Act applies to the Association.

Section 20 of The Interpretation Act applies.

(2) The head office of the Association shall be in the City of St. John's in the province.

Head office.

(3) The common seal of the Association shall consist of the Coat of Arms of Newfoundland referred to in The Newfoundland Coat of Arms Act, circumscribed by the words "The Newfoundland Dental Association".

Seal.

**Affixing  
of seal.**

(4) All deeds and documents to which the Association is a party and to which a seal is requisite shall be authenticated by the common seal of the Association and signed by any two members of the Executive Committee.

**President.**

(5) The Association shall have a President and such other officers as the Association shall determine.

**Powers of  
Association.**

**6.—(1)** Without limitation of its powers, included in the powers of the Association shall be power

- (a) to acquire, take, receive, hold and enjoy real and personal property of all kinds;
- (b) to borrow money for any of the purposes of the Association;
- (c) to mortgage, lease, sell or otherwise dispose of any of its real or personal property for the furtherance of the objects of the Association;
- (d) to make bye-laws prescribing and fixing the admission, registration, licence and annual fees or dues to be paid to the Association, and to collect the same;
- (e) to make bye-laws for the effective exercise of its powers, functions and duties, the management of its affairs and the conduct of its business;
- (f) to make such bye-laws as it may deem necessary for or incidental or conducive to the proper and better guidance, government, discipline and regulation of the profession of dentistry in the province, and the carrying out of the provisions of this Act;
- (g) to engage the services of legal or other advisors and pay for such services;
- (h) to draw, make, accept, endorse, execute and issue promissory notes, bills of exchange, and other negotiable or transferable instruments; and

- (i) to do such other things or exercise such other powers as are necessary or desirable for carrying out any of the purposes of this Act.

(2) All bye-laws of the Association and every amendment thereto, other than bye-laws and amendments thereto made pursuant to Section 29, shall not come into force until deposited with the Minister and published for two consecutive weeks in *The Newfoundland Gazette*, but the Lieutenant-Governor in Council may, at any time, by notice published in *The Newfoundland Gazette* declare any bye-law or portion thereof to be null and void.

When bye-laws effective.

7. The Association shall hold an annual general meeting in each calendar year at such a time and place as may be determined by the Executive Committee and at such meeting the Association shall elect all requisite officers, and transact all other business that may lawfully come before it, and a written notice stating the time and place of the annual general meeting shall be mailed to each Member at least one month prior to the date set for holding the said meeting.

Annual general meeting.

8. Ordinary general meetings of the Association may be held from time to time at the call of the President of the Association, and such meetings shall be called by the President on the requisition in writing of five Members, and, unless otherwise decided by the Executive Committee, notice of such general meetings shall be given in the manner provided for the calling of the annual general meeting, but in no event shall such notice be mailed to the Members less than two weeks prior to the date set for holding the meeting.

Ordinary general meetings.

9. Fifteen Members shall form a quorum at any annual or ordinary general meeting of the Association.

Quorum.

10. The Association may recover any fees or other amounts due the Association by any Member as a private debt due the Association in any court of competent jurisdiction.

Recovery of fees.

11. The affairs of the Association shall be managed by the Executive Committee, and the Executive Committee may exercise all such powers of the Association as are not by this Act

Powers of Executive Committee.

or the bye-laws, rules and regulations of the Association required to be exercised by the Association at the annual general meeting or ordinary general meetings of the Association.

THE NEWFOUNDLAND DENTAL BOARD.

Creation of Board.

**12.**—(1) There shall be a Board to be called “The Newfoundland Dental Board”, consisting of four registered and licensed dentists elected from among the Members at an annual general meeting of the Association, together with the Deputy Minister of Health for the province, who shall be a Member *ex-officio* of the Board.

Pending election of the Board.

(2) Notwithstanding anything contained in this Act, until the Board is first constituted under subsection (1), and for thirty days thereafter but no longer, the Dental Board of Newfoundland established by The Dental Act, chapter 57 of The Revised Statutes of Newfoundland, 1952, in office immediately before the coming into force of this Act shall have the powers and carry out the functions and duties of the Board and the disciplinary committee under this Act.

Member of Board to be licensed and registered.

**13.** All the elected Members of the Board shall be duly registered and licensed to practise in accordance with the provisions of this Act and the bye-laws of the Association and shall be residents of the province, and any Member who, during the term for which he was elected a Member of the Board, ceases to be so registered and licensed or to reside in the province shall forthwith be deemed to have resigned and vacated his office as member thereof.

Term of Board Members.

**14.** Members of the Board shall be elected and hold office for a term of three years or until the appointment of their successors, but shall be eligible for re-election.

Vacancy in membership of Board.

**15.** Any vacancy occurring by reason of the death, resignation or removal of a Member of the Board shall be filled by the appointment, by the remaining Members of the Board, of another Member from the membership of the Association, and the Member so appointed shall hold office as a Member of the Board for the remainder of the term of the Member who died, resigned or was removed.

**16.** The Members of the Board shall elect from among their number a Chairman, a Vice-Chairman and the Registrar. Officers.

**17.** Three Members of the Board shall be a quorum for the transaction of business. Quorum.

**18.** The Chairman or, in his absence, the Vice-Chairman shall preside at all meetings of the Board. Presiding officer.

**19.** The Board shall make such rules and regulations as it may deem necessary for the calling of its meetings and the order and conduct of business at such meetings, but, in the absence of such rules and regulations, such meetings shall be called by the Chairman of the Board by notice given, by letter, telegram or telephone, at least forty-eight hours prior to the time set for the holding thereof. Meetings

**20.** At any meeting of the Board each Member thereof, including the Chairman and Vice-Chairman, shall have one vote, and, in the case of a tie, the presiding officer shall have a second or casting vote. Vote at meetings.

**21.** The Board shall

Powers of Board.

- (a) examine all degrees, diplomas, licences and other credentials for the purpose of determining if the owner of such credentials should be licensed to practise and to be registered in accordance with the provisions of this Act and the bye-laws of the Association and may require the owner of such credentials to attest on oath that he is the person referred to therein;
- (b) prescribe and conduct such examination or examinations as it deems necessary to ascertain the qualifications of any person in accordance with subparagraph (v) of paragraph (b) of Section 26;
- (c) approve the issue of licences to practise or permits to persons who meet the requirements of this Act; and
- (d) issue certificates to persons to perform the services mentioned in paragraph (b) of Section 32.

## REGISTRAR AND DENTAL REGISTER.

Registrar's  
duties.

**22.** The Registrar shall

- (a) be the secretary of the Board and the disciplinary committee and attend all meetings of the Board and the disciplinary committee and keep a record of the proceedings thereof in a book or books provided for that purpose;
- (b) make and keep a book or register which shall be called the "Dental Register" in which he shall register the names of all those entitled to practise Dentistry or Dental Surgery in the province in the form and with the particulars set forth in Schedule A to this Act, which particulars shall be furnished by each of such persons to the Registrar before a licence to practise or a permit is issued to him;
- (c) upon being advised that the Board has approved the issue of a licence to practise or a permit to any person, enter the name of such person in the Dental Register and issue to him a licence to practise or permit in the form set forth in Schedule B to this Act, and every such licence or permit shall be signed by the Chairman of the Board and by the Registrar;
- (d) from time to time make the necessary alterations in the address or qualification of any Member;
- (e) strike off the Register the name of any Member who has died and the name of any Member whom he has been instructed by the Board or the disciplinary committee to strike off the Register, but the Registrar shall restore the name of such last-mentioned Member to the Register upon order of the Board or the disciplinary committee; and
- (f) on or before the thirty-first day of October in each year cause to be published in *The Newfoundland Gazette* the names, in alphabetical order with their respective addresses, of all persons who are holders of licences to

practise or permits and whose names appear on the Register as at the first day of September next preceding such publication.

**23.**—(1) A permit issued pursuant to paragraph (c) of Section 22 shall be for a period not exceeding one year and may be renewed, from time to time, for any period not exceeding one year at the discretion of the Board, but the issue of such permit or the renewal thereof shall not authorize or be deemed to authorize the holder thereof to engage in the full-time private practice of Dentistry or Dental Surgery.

Term of permit.

(2) The Board may attach to any permit issued pursuant to paragraph (c) of Section 22 such conditions as it may deem advisable, and such permit may be cancelled by the Board at any time for breach of any of the said conditions.

Conditions of permit.

(3) Every person, whose name appeared on the Dental Register referred to in Section 4 as the holder of a temporary permit as at the date of the coming into force of this Act and any other person to whom a permit is issued by the Board under this Act, shall be an Associate Member of the Association and have all the privileges of membership except the right to vote at meetings or to be elected as an officer of the Association or as a Member of the Board.

Associate Members.

**24.** The Register shall be open and subject to inspection at all reasonable times by any person.

Inspection of Register.

**25.** A copy of the Register for any year shall be *prima facie* evidence in all courts in the province that the persons whose names are inscribed in the Register are deemed qualified to hold licences to practise or permits, as the case may be, in the province and are registered in accordance with the provisions of this Act, and the absence of the name of any person from such copy shall be *prima facie* evidence that such person is not so qualified and registered.

Copy of Register *prima facie* evidence.

#### REGISTRATION REQUIREMENTS.

**26.** Every person shall be entitled to receive a licence to practise Dentistry or Dental Surgery in the province who pays

Entitlement to licence.

the prescribed registration and licence fees and the Association dues and

- (a) whose name appears on the Dental Register referred to in Section 4 hereof at the date of coming into force of this Act; or
- (b) who
  - (i) holds the academic qualifications set forth in Schedule C to this Act,
  - (ii) is of the full age of twenty-one years,
  - (iii) has a working knowledge of the English language,
  - (iv) produces a certificate of satisfactory character, and
  - (v) holds a certificate of qualification of the National Dental Examining Board, or its predecessor, the Dental Council of Canada, which was known originally as the Dominion Dental Council, or has passed such other examination or examinations as may be prescribed by the Board.

Entitlement  
to permit.

**27.** Any person shall be entitled to receive a permit who pays the prescribed registration and licence fees and Association dues and who is an employee of the Department of Health for the province or other agency designated by the Minister and who

- (a) holds a temporary permit issued by the Dental Board of Newfoundland referred to in Section 4; or
- (b) fulfils the conditions contained in paragraph (b) of Section 26, other than subparagraph (v) thereof.

Offence.

**28.** A person shall not advertise or hold himself out to the public as a specialist or as being specially qualified in a particular branch of Dentistry or dental work without having received from the Registrar a certificate of having complied with the conditions relating to qualification and fitness set forth in the regulations forming Schedule D to this Act.

## ANCILLARY BODIES

**29.**—(1) The Association may make bye-laws and regulations, which, upon being approved by the Lieutenant-Governor in Council, shall have the effect of law as if specifically enacted in this Act, providing for

Dental  
Hygienists.

- (a) the establishment, development, regulation and control of a body ancillary to the dental profession, the members of which shall be known as “Dental Hygienists”, including, without limitation of the generality of the foregoing,
  - (i) prescribing what functions of the practice of Dentistry shall constitute the practice of dental hygiene,
  - (ii) prescribing the conditions under which Dental Hygienists may practise dental hygiene,
  - (iii) prescribing the qualifications of Dental Hygienists for their registration in a Register to be kept by the Registrar which shall be known as the “Register of Dental Hygienists”,
  - (iv) prescribing the admission and annual fees payable by Dental Hygienists on becoming members of the said ancillary body,
  - (v) prescribing examinations for ascertaining the qualifications of any person to be registered or licensed as a Dental Hygienist and the method of conducting such examinations,
  - (vi) providing for the cancellation or suspension of registration of Dental Hygienists and of their right to practise as such in the province and the circumstances under which such cancellation, suspension of registration or right to practise may be effected,

- (vii) providing for the application, *mutatis mutandis*, of Sections 33 to 40 with respect to regulations made under subparagraph (vi),
  - (viii) prescribing the duties of Members with respect to the employment of and work performed by Dental Hygienists,
  - (ix) prohibiting any person from practising dental hygiene who is not registered as a Dental Hygienist under the bye-laws or regulations made under this section and who does not hold a valid and subsisting licence as such thereunder, if such licence is required by the said bye-laws or regulations,
  - (x) prohibiting a Dental Hygienist from performing any act or rendering any service not a part of the practice of dental hygiene under subparagraph (i), and
  - (xi) prescribing such other matters and things as may be necessary for or incidental to the practice of dental hygiene and the usefulness, welfare and conduct of Dental Hygienists; and
- (b) the establishment, development, regulation and control of a body ancillary to the dental profession, the members of which shall be known as "Dental Technicians", including, without limitation of the generality of the foregoing,
- (i) prescribing the functions of the practice of Dentistry which may be carried on by Dental Technicians,
  - (ii) prescribing the qualifications required of Dental Technicians for their registration in a Register to be kept by the Registrar which shall be known as the "Registrar of Dental Technicians",

- (iii) prescribing the admission and annual fees payable by Dental Technicians on becoming members of the said ancillary body,
- (iv) prescribing the condition in which laboratories and premises operated by Dental Technicians shall be maintained,
- (v) prescribing examinations for ascertaining the qualifications of any person to be registered or licensed as a Dental Technician and the method of conducting such examinations,
- (vi) providing for the cancellation or suspension of registration of Dental Technicians and of their right to practise as such in the province and the circumstances under which such cancellation, suspension of registration or right to practise may be effected,
- (vii) providing for the application, *mutatis mutandis*, of Sections 33 to 40 with respect to regulations made under subparagraph (vi),
- (viii) prescribing the duties of Members with respect to the employment of and work performed by Dental Technicians,
- (ix) prohibiting any person from practising as a Dental Technician who is not registered as such under the bye-laws or regulations made under this section and who does not hold a valid and subsisting licence as such thereunder, if such licence is required by the said bye-laws or regulations,
- (x) prohibiting a Dental Technician from performing any act or rendering any service not a part of the practice of a Dental Technician under subparagraph (i), and

- (xi) prescribing such other matters or things as may be necessary for or incidental to the work, usefulness, welfare or conduct of Dental Technicians.

Offence and penalty.

(2) The Association may, in bye-laws or regulations made under subsection (1), provide that any person who fails to comply with or otherwise contravenes any specified provision of the bye-laws or regulations or who procures or attempts to procure for himself registration as a Dental Technician or Dental Hygienist, as the case may be, under the bye-laws or regulations by making a false or fraudulent representation or declaration either oral or in writing, or aids or assists another in so procuring or attempting to procure, is guilty of an offence and it may prescribe penalties to which such person is liable, on summary conviction, for failing to comply with or otherwise contravening such provision of the regulations or so procuring or attempting to procure or so aiding or assisting another in so procuring or attempting to procure.

Date of effect of bye-laws or regulations.

(3) Bye-laws or regulations made under this section shall be published in *The Newfoundland Gazette* and have effect from the date of publication or from such earlier or later date as may be specified in the bye-laws or regulations and the bye-laws or regulations shall be laid before the Legislature within fifteen days after they are made, if the Legislature is then in session, and, if it is not, then within fifteen days after the commencement of the next ensuing session.

#### PROFESSIONAL RIGHTS.

Recovery of fees.

**30.** Every person licensed and registered under the provisions of Section 22 of this Act shall be entitled to practise Dentistry or Dental Surgery in the province and to demand and recover in any court of competent jurisdiction in the province, with costs of suit, reasonable charges for professional aid, advice and visits and the cost of any dental or dental surgical appliances or treatment rendered or supplied by him to his patients.

Limitation of action.

**31.** A person registered in accordance with the provisions of this Act shall not be liable to any civil action for negligence or malpractice by reason of professional services requested or ren-

dered unless such action is commenced within two years from the date, in the matter complained of, such professional services terminated.

#### RIGHT TO PRACTISE.

**32.** A person shall not practise Dentistry or Dental Surgery within the province who is not registered in accordance with the provisions of this Act and the bye-laws of the Association unless

Offence to practice if not registered; exceptions.

- (a) he is a duly registered medical practitioner;
- (b) the Board has issued to him a certificate authorizing him to extract teeth and to perform such other specific duties within an area, all as defined in such certificate, and to receive payment for such services, and that person performs only such services as are set forth in the said certificate; or
- (c) he is giving necessary aid to any one in urgent need of dental aid, provided that the giving of such aid is not for hire, gain or hope of reward and is not made a business or means of gaining a livelihood either directly or indirectly by him.

#### DISCIPLINE.

**33.**—(1) There shall be a disciplinary committee the membership of which shall consist of the Members from time to time of the Board, and the disciplinary committee may suspend from practice or cause the Registrar to remove from the Register the name of any Member who has been convicted of an indictable offence, if his conviction be unreversed, or who has been guilty of any infamous, disgraceful or improper conduct in a professional respect, which shall include the fraudulent and exorbitant charging of fees, but the power vested in the disciplinary committee by this section shall not be exercised if the conviction is for a political offence which is made an indictable offence in the country where it was committed, or for an offence which, though indictable, ought not, in the opinion of the disciplinary committee, either from its nature or in the circumstances under

Disciplinary committee.

which it was committed, to disqualify such person from practising Dentistry or Dental Surgery.

Application of certain sections to disciplinary committee.

(2) Sections 17, 18, 19 and 20 shall, *mutatis mutandis* and subject to Section 34, apply to meetings of the disciplinary committee.

Procedure on complaint.

**34.** Upon receiving a written complaint that any Member is guilty of any indictable offence or conduct referred to in Section 33 for which he may be suspended or removed from the Register or of having violated any of the provisions of this Act or any of the bye-laws, rules or regulations of the Association or the Board, the disciplinary committee shall consider such complaint and, if it deems the same not to be frivolous or vexatious, it shall fix a time and place for the hearing of the complaint, and due notice of the time and place of the hearing, together with a statement of the matter which is to form the subject of the enquiry, shall be communicated to the Member in respect of whom the complaint is made at least eight clear days before the date set for the hearing.

Hearing.

**35.** The disciplinary committee shall meet at the time and place fixed for the hearing of the complaint referred to in Section 34 and shall hear the testimony of the witnesses, which shall be given under oath, which may be administered by any member of the disciplinary committee, and, for the purposes of such hearing, each member of the disciplinary committee is hereby vested with all the powers that are or may be conferred on a Commissioner by or under The Public Enquiries Act, and there shall be full right to examine and cross-examine all witnesses called and to adduce evidence in defence and reply.

*Idem.*

**36.** The disciplinary committee and the Member against whom the complaint referred to in Section 34 is made shall each be entitled to be represented by legal counsel, and the counsel for the disciplinary committee shall be paid by the Association.

*Idem.*

**37.** If the Member against whom the complaint referred to in Section 34 is made does not attend the hearing after being notified in accordance with the said section, unless such failure to attend is due to circumstances beyond his control and he shall have advised the disciplinary committee thereof, the disciplinary

committee may proceed in his absence to hear the witnesses and adjudicate upon the complaint.

**38.** If the complaint against any Member is found to be proven, the disciplinary committee may suspend such Member from practice for such period as it sees fit or may cancel his licence to practise or permit and order his name to be stricken off the Register, but such Member may, upon application to the disciplinary committee, be reinstated, have his licence or permit renewed and have his name restored to the Register in such manner and upon such terms as the disciplinary committee may decide. Penalty.

**39.—(1)** The decision of the disciplinary committee on any complaint shall be communicated immediately to the Member, against whom the complaint was made, by registered post, pre-paid, and if such Member is dissatisfied with the decision of the disciplinary committee, he may, within thirty days after he has received the decision of the disciplinary committee, serve on the Registrar a written notice of his intention to appeal the decision of the disciplinary committee to a judge of the Supreme Court of Newfoundland. Right of appeal.

(2) The notice of appeal served under subsection (1) of this section shall be signed by the Member or by his solicitor or agent and in the notice the grounds of the appeal shall be set forth, and the Member shall file a copy of the notice in the office of the Registrar of the Supreme Court of Newfoundland. Notice of appeal.

(3) The Member shall, within fourteen days after service of the notice of appeal under subsection (2), apply to the judge for the appointment of a day for the hearing of the appeal and shall, not less than fourteen days before the hearing, serve upon the Registrar a written notice of the day appointed for the hearing. Notice of hearing.

(4) The judge shall hear the appeal and the evidence adduced before him by the Member and the Board in a summary manner and shall decide the matter of the appeal. Hearing.

Papers to  
be produced.

(5) The Registrar shall cause to be produced before the judge on the hearing of the appeal all papers and documents in his possession affecting the matter of the appeal.

Costs.

(6) The costs of the appeal are in the discretion of the judge.

Appeal to  
Supreme Court.

(7) An appeal may be taken from the decision of the judge to the Supreme Court upon any point of law raised upon the hearing of the appeal referred to in subsection (1).

Effect to be  
given decision.

**40.** A copy of the decision on any appeal shall be filed with the Registrar and upon receipt thereof, and, after the time limited for further appeals has expired, the disciplinary committee and the Board shall give effect thereto.

#### OFFENCES AND PENALTIES.

Offences and  
penalties.

**41.** Subject to Section 32, every person who

(a) is not registered in accordance with the provisions of this Act and the bye-laws of the Association, and who, by himself or by any other person,

(i) practises or holds himself out as qualified or entitled to practise Dentistry or Dental Surgery or any branch thereof,

(ii) provides or performs any service, act or operation which is part of the practice of Dentistry or Dental Surgery or any branch thereof or undertakes or purports to provide or perform any such service, act or operation,

(iii) makes, produces, reproduces, constructs, furnishes, supplies, alters or repairs any prosthetic denture, bridge, appliance or thing to replace, improve or supplement any human tooth, or to prevent, alleviate, correct or improve any condition in the oral cavity, or to be used in, upon or in connection with any human tooth, jaw or associated structure or tissue, or in the treatment of any condition thereof, or gives any advice or assistance in con-

nection therewith, unless such work is performed by a Dental Technician for and upon the written prescription of a Member, accompanied, where necessary, by a design, cast or impression furnished by that Member, provided that any such work does not involve the examination or treatment of the body of a person, or

- (iv) takes or uses any name, title, addition or description representing or implying that he is a graduate of any dental college or that he practises or is entitled or qualified to practise Dentistry or Dental Surgery or any branch thereof, or which contains the words "Dentist", "Dentistry", "Dental", "Dental Surgeon", or "Dental Surgery" or any similar word or words or any derivative thereof or any letters, signs or abbreviations having a similar significance;
- (b) unless he operates a dental supply business, has, without reasonable excuse, in his place of business dental equipment or materials, or both, of a character similar to that with which a place of business of a Member would be equipped, and which dental equipment would enable the person generally to practise Dentistry, Dental Surgery or any branch thereof;
- (c) knowingly aids and abets another in the contravention of any of the provisions of this Act or of the bye-laws of the Association;
- (d) permits or allows any person in his employ other than a registered dentist to practise Dentistry, or other than a registered Dental Technician or a registered Dental Hygienist to perform, under the supervision of a Member, any work, service, advice or assistance that is part of the practice of a Dental Technician or Dental Hygienist; or
- (e) procures or attempts to procure for himself registration in accordance with the provisions of this Act and the bye-laws of the Association by making any false or

fraudulent representation or declaration, either oral or in writing,

is guilty of an offence and liable, on summary conviction upon the complaint of any person, for a first offence, to a penalty of not less than one hundred dollars nor more than two hundred dollars or in default of payment to imprisonment for a term not exceeding thirty days and for the second offence to a penalty of not less than two hundred dollars nor more than five hundred dollars or in default of payment to imprisonment for a term not exceeding three months, and for every subsequent offence to a penalty of not less than five hundred dollars nor more than two thousand dollars or in default of payment to imprisonment for a term not exceeding six months, and for the purpose of this section each breach of the provisions of this Act or the bye-laws of the Association shall constitute a separate and distinct offence.

**Time limit  
for prosecutions.**

**42.** A prosecution for an offence under this Act shall not be commenced or process served later than twelve months after the date the offence was alleged to have been committed.

#### GENERAL.

**Persons entitled  
to recover fees.**

**43.** No person shall recover in any court of law any fees or money for any professional services or operation performed by him or for any materials supplied by him in the practice of Dentistry or Dental Surgery unless such person is a duly registered medical practitioner or has received a licence to practise or a permit or a certificate to perform specified services in accordance with the provisions of this Act and the bye-laws of the Association.

**Inspection.**

**44.—(1)** The Board shall from time to time appoint such representatives, in this section called the "representatives", as it shall deem advisable for the purpose of effecting adequate and systematic inspection of all dental offices and Dental Technicians' laboratories in the province and of the conditions under which the practice of Dentistry and Dental Surgery is being conducted in the province.

**Right of entry.**

**(2)** The representatives shall have the authority to enter, without notice, any and all dental offices and Dental Technicians'

laboratories at all reasonable times to make all necessary inspection and observations therein.

(3) The representatives shall report to the Board and the Member or Dental Technician concerned the results of their inspection with their recommendations for the remedying of any unethical, insanitary, illegal or improper conduct, condition, practice or procedure which upon such investigation may be found.

Report and recommendations.

(4) Every recommendation of the representatives which is not promptly and adequately adopted and carried into effect by the Member or Dental Technician concerned shall be reported by the representatives to the Board which shall thereupon make a formal demand on that Member or Dental Technician to adopt and carry into effect the recommendation.

Failure to comply with recommendations.

(5) Failure on the part of any Member or Dental Technician to comply promptly and completely with a written demand of the Board shall be deemed improper conduct on the part of the Member or Dental Technician.

Failure to comply with demand.

(6) Any Member or Dental Technician who is aggrieved by a report or recommendation of the representatives or demand of the Board made pursuant to this section may appeal the same to a judge of the Supreme Court, and the provisions of Section 39 shall *mutatis mutandis* apply to appeals under this section.

Appeal.

**45.**—(1) Any person who fails to comply with or otherwise contravenes any of the provisions of this Act or the bye-laws or regulations made thereunder is guilty of an offence and every person who is guilty of an offence is, where no penalty is specifically provided in this Act or the bye-laws or regulations made thereunder, liable on summary conviction in the case of a first conviction to a fine not exceeding one hundred dollars and in the case of a second or subsequent conviction for a similar offence to a fine not exceeding two hundred dollars and, in either case, in default of payment to imprisonment for a term not exceeding three months.

Offence.

(2) For the purpose of subsection (1), a conviction is not deemed to be a second or subsequent conviction unless it is in

Offences within twenty-four months of each other.

respect of an offence committed within twenty-four months after the date of a previous offence.

Revocation or amendment of rules or regulations previously made.

**46.** Notwithstanding the repeal of The Dental Act, chapter 57 of The Revised Statutes of Newfoundland, 1952, any rules or regulations made under that Act or any amendment thereto or under any statute for which the said Act was substituted and in force immediately before the 2nd day of July, 1968, may be amended or revoked under this Act as if they were made under authority of this Act.

SCHEDULE A  
DENTAL REGISTER  
HOLDERS OF LICENCES TO PRACTICE

Date of Registration	Name	Age	Place of Birth	Residence	Location of Practice	Date of Diploma and degree	Institution granting Diploma

HOLDERS OF ANNUAL PERMITS

Date of Registration	Name	Age	Place of Birth	Residence	Location of Practice	Date of Diploma and degree	Institution granting Diploma

SCHEDULE B

Form of licence issued under paragraph (c) of Section 22  
of The Dental Act

The Newfoundland Dental Association

To all to whom These Presents Shall Come, GREETING:

Be it known by the power vested in us .....  
is hereby entitled to practise Dentistry and Dental Surgery in  
the Province of Newfoundland, with all the rights and privileges  
thereto appertaining.

WITNESS our hands and the Seal of the Association this  
..... day of .....A.D., 19

.....  
*Chairman, The Newfoundland Dental Board*

.....  
*Registrar, The Newfoundland Dental Board*

Form of annual permit issued under paragraph (c) of Section 22  
of The Dental Act

The Newfoundland Dental Association

To all to whom These Presents Shall Come, GREETING:

Be it known by the power vested in us .....  
is hereby entitled to this Permit under The Dental Act with  
all the rights and privileges thereto appertaining, subject to the  
terms and conditions on the reverse side hereof.

WITNESS our hands and the Seal of the Association this  
..... day of .....A.D., 19

Expiry Date .....

.....  
*Chairman, The Newfoundland Dental Board*

.....  
*Registrar, The Newfoundland Dental Board*

## SCHEDULE C

## Educational requirements of The Newfoundland Dental Board:

All candidates for registration must

- (a) have passed a preliminary or matriculation examination that complies with the standard prescribed by the Board before beginning the study of dentistry;
- (b) have taken two complete academic years of recognized pre-professional education at Memorial University of Newfoundland or the equivalent thereof at any other university, school or college recognized by Memorial University of Newfoundland; and
- (c) have successfully completed four academic years of professional education and hold one of the following degrees (not honorary) in dentistry: — D.D.S., B.D.S., D.M.D., or Fellowship in Dental Surgery from a recognized university in Canada, the United States of America, Australia, Denmark, Eire, New Zealand, Norway, Sweden, Union of South Africa or the United Kingdom.

## SCHEDULE D

Regulations governing the registration of specialists:

1. In these regulations

(a) "Act" means The Dental Act; and

(b) words having a special meaning when used in the Act shall have the same meaning when used herein.

2. A person may advertise or hold himself out as a specialist or as being especially qualified in a particular branch of Dentistry in the province who

(a) is registered to practise Dentistry in accordance with the provisions of the Act and the bye-laws of the Association;

(b) has successfully completed the prescribed period of graduate training in an institution approved by the Board;

(c) has passed within a prescribed period the Part 1 examination of the Royal College of Dentists of Canada, or such other examination as the Board may prescribe;

(d) holds an unrevoked certificate of qualification issued by the Board specifying the particular specialty of the registrant; and

(e) limits his practice exclusively to the practising of his particular specialty.

3. The Board shall recognize specialists in (a) Oral Surgery, (b) Orthodontics, (c) Prosthodontics, (d) Periodontics, (e) Pedodontics, (f) Dental Public Health and such other specialties as it may from time to time approve.

4. The registration fee for specialists shall be set by bye-laws approved by the Lieutenant-Governor in Council.

5. The Registrar shall list in the Register specialists registered under this Act and their specialty.

6. Every certificate issued by the Board shall be subject to revocation by the Board at any time if the person to whom it was issued is shown not to have been qualified to receive it, and such person shall also be subject and entitled to the provisions of Sections 33 to 40, *mutatis mutandis*, of the Act.





## CHAPTER 78

### An Act Respecting the Department of Community and Social Development

1. This Act may be cited as The Department of Community and Social Development Act. Short title.
2. In this Act Interpretation.
- (a) "Assistant Deputy Minister" means the Assistant Deputy Minister of Community and Social Development appointed under this Act;
  - (b) "Associate Deputy Minister" means the Associate Deputy Minister of Community and Social Development appointed under this Act;
  - (c) "Department" means the Department of Community and Social Development constituted by this Act;
  - (d) "Deputy Minister" means the Deputy Minister of Community and Social Development appointed under this Act;
  - (e) "Minister" means the Minister of Community and Social Development; and
  - (f) "regulations" means regulations made under this Act.
- 3.—(1) There shall be a department of the Government called the Department of Community and Social Development over which the Minister of Community and Social Development for the time being appointed by the Lieutenant-Governor by Commission under the Great Seal of the province shall preside. Department constituted.
- (2) The Minister has the management and direction of the Department and holds office during pleasure. Management.

Deputy  
Ministers and  
Assistant  
Deputy  
Minister.

4.—(1) The Lieutenant-Governor in Council may appoint

- (a) an officer called the Deputy Minister of Community and Social Development;
- (b) an officer called the Associate Deputy Minister of Community and Social Development; and
- (c) an officer called the Assistant Deputy Minister of Community and Social Development.

Deputy  
Minister.

(2) The Deputy Minister shall be the deputy head of the Department and shall hold office during pleasure.

Associate  
Deputy  
Minister.

(3) The Associate Deputy Minister shall hold office during pleasure and shall discharge under the authority of the Minister such duties and functions as the Minister may determine.

Absence of  
Deputy  
Minister.

(4) In the absence of the Deputy Minister, and unless otherwise provided by the Lieutenant-Governor in Council, the Associate Deputy Minister, or if there is no Associate Deputy Minister or the Associate Deputy Minister is absent, the Assistant Deputy Minister, or if there is no Assistant Deputy Minister or the Assistant Deputy Minister is absent, an officer or clerk named by the Minister has the powers and shall perform the duties of the Deputy Minister.

Other officers,  
clerks and  
employees.

(5) Such other officers, clerks and employees as are necessary for the proper conduct of the business of the Department shall be appointed or employed in the manner authorized by law, but subject to the prior approval of the Lieutenant-Governor in Council, the Minister may temporarily employ such technical and other assistants as he deems necessary, and, with the like approval, fix the remuneration of and prescribe the expenses that may be incurred by those assistants in carrying out their official duties.

Transfer of  
members  
of staff.

5. Notwithstanding Section 4, the Lieutenant-Governor in Council may by order designate any person who, immediately before the coming into force of this Act, was an officer, clerk or employee in the Department of Economic Development or any other department of the Government to fill any position in

the Department, and upon such designation, that person shall be deemed to have been transferred to the Department, but no person shall by reason only of such designation be eligible to be classed as an established civil servant.

**6.**—(1) The Department shall have an official seal which shall be officially and judicially noticed. Seal.

(2) Whenever the official seal of the Department is used, it shall be authenticated by the signature of the Minister, or in the absence of the Minister, by the signature of the Deputy Minister, or if there is no Deputy Minister or the Deputy Minister is absent, by the signature of the Associate Deputy Minister, or if there is no Associate Deputy Minister or the Associate Deputy Minister is absent, by the signature of the Assistant Deputy Minister, or if there is no Assistant Deputy Minister or the Assistant Deputy Minister is absent, by the signature of the officer or clerk named by the Minister under subsection (4) of Section 4. Authentication of seal.

**7.** Whenever in any Act or regulation heretofore enacted or made or in any order made under any Act or regulation or in any Order in Council or Order in Commission or in any contract, lease or any other document whatsoever, it is provided that any right, power, duty, liability or function is or shall be vested in or exercised or performed by, or there is mentioned or reference is made to Substitution of Minister, Deputy Minister and Department in certain cases.

- (a) a minister,
- (b) a deputy minister, or
- (c) any department of the Government,

in any matter entrusted to the Minister by or under this Act, such right, power, duty, liability or function shall be vested in or exercised or performed by, and there shall be substituted in the mention or reference,

- (d) the Minister,
- (e) the Deputy Minister, and

(f) the Department,

respectively for the officers and departments referred to in paragraphs (a), (b) and (c).

Powers,  
functions  
and duties.

**8.** The powers, functions and duties of the Minister extend to and include all matters relating to the promotion generally of community or social development in the province, including without limitation of the foregoing,

(a) such co-operation with the Government of Canada as may be necessary to carry out

(i) programmes of community or social development or both under the Agricultural Rehabilitation and Development Act or any other Act, department, agency or body under the jurisdiction of the Parliament of Canada,

(ii) the federal War on Poverty as applied to the province,

(iii) the activities of the Company of Young Canadians as applied to the province,

(iv) all matters related to the centralization of the population of the province, and

(v) any other matter or thing related or incidental to community or social development;

(b) the doing of such other things or the exercise of such other powers as are necessary or desirable for carrying out any of the purposes of this Act; and

(c) the exercise and discharge of such other powers, functions and duties as the Lieutenant-Governor in Council assigns to the Minister.

Agreements.

**9.—(1)** Subject to the approval of the Lieutenant-Governor in Council, the Minister may enter into agreements with the

Government of Canada or any agency thereof or any of them providing for

- (a) the joint undertaking, by the Government of Newfoundland or any agency thereof with the Government of Canada or any agency thereof or by any of them, of projects for community or social development or both in the province or relating to any aspect of the matters entrusted to the Minister by or under this Act;
- (b) the payment to the province of contributions in respect of the cost of any projects referred to in paragraph (a); or
- (c) any or all of the matters referred to in paragraphs (a) and (b).

(2) For the purpose of assisting the development of income and employment opportunities and improving the standard of living in the province or for any of the purposes of this Act, and subject to the approval of the Lieutenant-Governor in Council, the Minister may cause to be prepared and undertaken alone or with Canada, programmes of research and investigation, and may co-ordinate such programmes with other similar programmes being undertaken in the province or elsewhere in Canada.

Research.

10. In carrying out any project or research programme under this Act or in pursuance of an agreement made under this Act, the Minister shall, whenever possible, make use of the services and facilities of other departments of the Government of the province.

Other departments.

11. Subject to the approval of the Lieutenant-Governor in Council, the Minister may

Agreements.

- (a) enter into any agreement for promoting the objects of this Act, including without limitation of the foregoing, agreements with universities, educational institutions, the municipal authority exercising jurisdiction in any municipality or community whatsoever in the province and agreements with any other person;

(b) enter into any agreement for which no specific provision is made elsewhere in this Act which he deems necessary or desirable for the purpose of exercising or discharging his powers, duties or functions; or

(c) enter into any or all of the agreements referred to in paragraphs (a) and (b).

Implementation of agreements.

**12.** The Minister may implement any agreement made under this Act.

Consultation.

**13.** In exercising his powers or carrying out his duties and functions under this Act, the Minister may consult with and inaugurate conferences of representatives of producers, industry, science, labour and municipal authorities.

Advisory committees.

**14.** In order to carry out the purposes and provisions of this Act, the Minister may establish such advisory committees as he deems necessary or desirable and appoint the members thereof, and the members of such committees are entitled to be paid reasonable travelling and living expenses from and to their ordinary places of residence in the course of their duties.

Regulations.

**15.—(1)** The Lieutenant-Governor in Council may make regulations providing for any matters concerning which he deems regulations are necessary or desirable to carry out the purposes and provisions of this Act.

Date of effect of regulations.

(2) Regulations made under this section shall be published in *The Newfoundland Gazette* and have effect from the date of publication or from such other date as may be specified in the regulations and the regulations shall be laid before the Legislature within fifteen days after they are made, if the Legislature is then in session, and, if not, then within fifteen days after the commencement of the next ensuing session.

Penalty.

(3) Any person who fails to comply with or otherwise contravenes a regulation made under this section is guilty of an offence and liable on summary conviction to a fine not exceeding two hundred dollars or in default of payment to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

**16.** The rights, duties, powers, liabilities and functions of the Minister extend and apply to those boards and other public bodies, officials, subjects, services and properties of the Crown which the Lieutenant-Governor in Council designates and assigns to the Minister and over which the Minister is given the control, regulation, management and supervision.

Powers of Minister over boards and other public bodies.

**17.** Except any deed or document referred to in subsection (4) of Section 22, no agreement, deed or other writing made or executed under this Act shall bind the Government or the Minister or be held to be the act of the Government or of the Minister unless it is signed by him or the Deputy Minister or one of the persons designated by or under subsection (4) of Section 4 to exercise the powers and perform the duties of the Deputy Minister in the circumstances therein specified and sealed with the official seal of the Department.

Seal to be affixed to documents.

**18.—(1)** Any person appointed for that purpose by the Minister may summon before him and examine on oath any persons he deems necessary respecting any matter relating to the business of the Department upon which their appearance is required and may require those persons to bring with them such papers, plans, books, documents and things as he deems necessary to examine with reference to that matter and he may administer the oath to those persons and they shall be paid such amounts for their time and disbursements as the Minister decides.

Power to examine persons on oath.

(2) Every person summoned in accordance with subsection (1) who neglects or refuses to attend and be examined or to bring with him such papers, plans, books, documents and things as he is required to bring is guilty of an offence and liable on summary conviction to a penalty of twenty dollars and to a further penalty of five dollars for every day during which he neglects or refuses to do so.

Penalty.

(3) A person giving evidence in an examination held under this section shall not be excused from answering any question upon the ground that the answer may tend to establish his liability to a civil proceeding at the instance of the Crown or of any person or to a prosecution under any Act of the Legislature.

Person not excused from answering question.

Answer not to be used in evidence against him.

(4) If, with respect to any question, a person referred to in subsection (3) objects to answer upon any of the grounds mentioned in that subsection and if, but for that subsection, he would therefore have been excused from answering that question, then, although that person is by reason of that subsection compelled to answer, the answer so given shall not be used or receivable in evidence against him in any civil proceeding at the instance of the Crown or of any person or in a prosecution under any Act of the Legislature.

Security for performance of agreements.

**19.** The Minister may require and take security by way of bond or deposit of money for the due performance of any agreement entered into under this Act.

Actions, etc., to be taken in the name of the Attorney General.

**20.** All actions, suits and other proceedings taken by the Minister or the Department for the enforcement of any agreement or for the recovery of damages in tort or arising out of contract or for the trial of any right in respect of any real or other property under the control of the Minister shall be instituted in the name of Her Majesty's Attorney General for Newfoundland.

Notice of action against officer.

**21.—(1)** No action shall be commenced against any officer, servant or agent of the Department for anything done by him in the course of his employment until one month after notice in writing has been delivered to him or left at his usual place of residence by the party who intends to institute the action or by his solicitor.

Contents of notice.

(2) A notice delivered under subsection (1) shall clearly and explicitly state the cause of action, the name and place of residence of the intended plaintiff and the name and address for service of his solicitor, if any.

Acquisition of property.

**22.—(1)** The Minister, for and in the name of Her Majesty in right of the province, may acquire by purchase, lease or otherwise and hold and has the management and control of any real or personal property he deems necessary for the purposes of this Act.

Disposal of property.

(2) The Minister may

- (a) sell; or
- (b) lease, rent, hire or otherwise dispose of for such period and subject to such terms and conditions as he may stipulate,

any real or personal property of which he has the management and control.

(3) All money received by the Minister in exercise of the powers conferred on him by subsection (2) shall be paid into the Consolidated Revenue Fund.

Disposal of money.

(4) Whenever Her Majesty in right of the province acquires or conveys real or other property through the Minister, the Minister or the Deputy Minister may execute all deeds and documents on behalf of Her Majesty in right of the province with his own hand and official style and with the seal of the Department.

Execution of deeds and other documents.

**23.** Power to enter into any agreement shall include power to amend any such agreement from time to time, but if the approval of the Lieutenant-Governor in Council to the original agreement is required, such approval is also required for any amending agreement.

Power to amend agreements.

**24.—(1)** The Minister, after giving

Entry on land.

- (a) to the owner of land, if he is known and available and can easily be contacted; or
- (b) to the occupier of occupied land, whether or not he is the owner of the land, if he lives on any part of the land or is known and available and can easily be contacted,

such notice as to the Minister seems reasonable under the circumstances, may authorize any engineer, agent, servant or workman employed by or under him to enter into and upon the land and survey the land and make such borings or sink such trial-pits and cut such trees as he deems necessary for any purpose

relative to the work under his control, and if agreement cannot be reached between the Minister and the party or parties having ownership of the land as to compensation, if any, to be paid, the amount of compensation shall be ascertained in the manner provided by law for assessing the compensation payable where land is expropriated.

Fire precautions  
and restoration  
of surface.

(2) The Minister shall, by his engineers, agents, servants and workmen,

- (a) in doing anything authorized by subsection (1), exercise reasonable precautions to prevent fires; and
- (b) fill in, as soon as practicable, the borings and trial-pits referred to in subsection (1), as nearly as reasonably may be to the condition existing before the borings were made and the trial-pits were sunk.

Offence.

**25.** Every person who

- (a) obstructs or interferes with any engineer, agent, servant or workman of the Minister engaged in exercising on behalf of the Minister any power pursuant to this Act; or
- (b) interferes with any erection placed upon or work done on any land under this Act

is guilty of an offence and liable on summary conviction to a fine not exceeding one hundred dollars and in the case of a second or subsequent conviction for a similar offence to a fine not exceeding two hundred dollars and, in either case, in default of payment to imprisonment for a term not exceeding three months.

Payments.

**26.** Any payments required to be made by or on behalf of Her Majesty in right of the province pursuant to any agreement entered into under this Act or in carrying out the provisions of this Act or the regulations shall be paid by the Minister of Finance, on the request of the Minister, out of the Consolidated Revenue Fund of the province.



## CHAPTER 79

### An Act Respecting the Department of Economic Development

- 1.** This Act may be cited as The Department of Economic Development Act. Short title.
- 2.** In this Act, unless the context otherwise requires Interpretation.
- (a) "Department" means the Department of Economic Development;
- (b) "Minister" means the Minister of Economic Development.
- 3.—(1)** There shall be a Department of the Government of Newfoundland, which shall be called the Department of Economic Development, over which the Minister of Economic Development for the time being appointed by the Lieutenant-Governor by Commission under the Great Seal of Newfoundland shall preside. Organization.
- (2) The Minister shall have the administration and direction of the Department and shall hold office during pleasure. Minister to have direction of Department.
- 4.—(1)** The Lieutenant-Governor in Council may appoint an officer, who shall be called the Deputy Minister of Economic Development, who shall be the deputy head of the Department and who shall hold office during pleasure. Deputy Minister.
- (2) Such other officers, clerks and employees as are necessary for the proper conduct of the business of the Department may be appointed or employed in accordance with the provisions of The Civil Service Act, but the Minister may, with the approval of the Lieutenant-Governor in Council, temporarily employ such technical or other assistants as he deems necessary and, with such approval, fix the remuneration of and prescribe such ex- Staff.

penses as may be incurred by such assistants in carrying out their official duties.

Power of Lieutenant-Governor in Council to make regulations for organization of Department.

**5.** The Lieutenant-Governor in Council may, on the recommendation of the Minister, make such orders and regulations as he may deem necessary for the immediate organization of the Department and the classification of positions therein, including the establishment of rates of compensation for each such class.

Power of Minister over boards and other public bodies.

**6.** The rights, powers, duties, liabilities and functions of the Minister shall extend and apply to such boards and other public bodies, officers, subjects and services and properties of the Crown as may be designated and assigned to the Minister by the Lieutenant-Governor in Council over which the Minister shall have the control, regulation, management and supervision.

General duties, powers and functions of Minister.

**7.** The duties, powers and functions of the Minister shall extend to and include all matters relating to the encouragement generally of economic development in Newfoundland and, without limiting the generality of the foregoing, particularly the following matters:

- (a) the encouragement of the development of established industries, the diversification of products and the application of modern methods for the production and marketing of the products of Newfoundland and products manufactured in Newfoundland;
- (b) the encouragement and assistance for the establishment in Newfoundland of new industries suited to the needs of Newfoundland and especially industries based on the natural resources and products of Newfoundland;
- (c) guidance of small industries, and encouragement of expansion in groups inadequately represented;
- (d) the promotion and utilization of the resources of Newfoundland;
- (e) the development of the products of Newfoundland industries and economic development of Newfoundland;
- (f) the study of industrial possibilities of all classes of organic materials and natural resources;

- (g) the encouragement of the production and use of by-products;
- (h) the encouragement of development of industrial art, industrial schools, reforestation, re-afforestation and mineral prospecting as aids to employment;
- (i) undertaking of research and conservation with respect to resources for use in industry;
- (j) the encouragement of co-operation among manufacturers;
- (k) the investigation and study of questions relating to the economic condition of, or to any economic problem in, Newfoundland;
- (l) the collection, abstraction and completion of statistical information relative to the economic and general activities and conditions of the people of Newfoundland;
- (m) the stimulation and co-ordination of the activities of all associations or other public or private organizations engaged in developing the tourist traffic of Newfoundland and generally the promotion and facilitation of tourist traffic and the development of a unified tourist policy;
- (n) the administration of such Acts, orders and regulations as may from time to time be designated by the Lieutenant-Governor in Council.

**8.** The Lieutenant-Governor in Council may establish such boards, committees and councils as he deems necessary to assist and advise the Minister in carrying out the provisions of this Act or any regulations made thereunder.

Boards  
and councils.

**9.** The Lieutenant-Governor in Council may make regulations to give effect to and carry out the objects of this Act, and may prescribe penalties upon summary conviction for violation of any such regulation by way of imprisonment for a term not exceeding three months or a fine not exceeding two hundred

Regulations  
and penalties  
before  
Legislature.

dollars or both such fine and imprisonment, and in default of such fine additional imprisonment for a term not exceeding two months.

Regulations to  
be published  
and laid before  
Legislature.

**10.** Regulations made under this Act shall forthwith after approval by the Lieutenant-Governor in Council be published in *The Newfoundland Gazette* and laid before the Legislature within fifteen days after they are made, if the Legislature is then in session, and, if not, then within fifteen days after the commencement of the next ensuing session thereof.



## CHAPTER 80

### An Act Respecting the Department of Education and Youth

1. This Act may be cited as The Department of Education and Youth Act. Short title.
2. In this Act Interpretation.
  - (a) "Advisory Committee" means the General Advisory Committee established under Section 21;
  - (b) "Assistant Deputy Minister" means the Assistant Deputy Minister of Education and Youth appointed under this Act;
  - (c) "Associate Deputy Minister" means the Associate Deputy Minister of Education and Youth appointed under this Act;
  - (d) "Commission" means the Denominational Policy Commission established under Section 18;
  - (e) "Department" means the Department of Education and Youth constituted by this Act;
  - (f) "Deputy Minister" means the Deputy Minister of Education and Youth appointed under this Act;
  - (g) "Educational Committee" means a Denominational Educational Committee established under Section 16;
  - (h) "Executive Secretary" means an Executive Secretary of an Educational Committee;
  - (i) "Minister" means the Minister of Education and Youth; and
  - (j) "regulations" means regulations made under this Act.

Construction.

**3.** This Act and the regulations shall be construed and interpreted so as to ensure that no provision thereof shall prejudicially affect any right or privilege with respect to denominational schools, common (amalgamated) schools, or denominational colleges, that any class or classes of persons had by law in the province at the date of Union of Newfoundland with Canada, or any such right or privilege hereafter by law acquired by the Pentecostal Assemblies of Newfoundland, and to ensure that out of public funds of the province provided for education

- (a) all such schools shall receive their share of such funds in accordance with scales determined on a non-discriminatory basis from time to time by the Legislature for all schools then being conducted under authority of the Legislature; and
- (b) all such colleges shall receive their share of any grant from time to time voted for all colleges then being conducted under authority of the Legislature, such grant being distributed on a non-discriminatory basis.

Department constituted.

**4.—(1)** There shall be a Department of the Government called the Department of Education and Youth over which the Minister of Education and Youth for the time being appointed by the Lieutenant-Governor by Commission under the Great Seal of the province shall preside.

Divisions or branches of Department.

(2) Subject to the approval of the Lieutenant-Governor in Council, the Minister may establish such divisions or branches of the Department as he deems advisable.

Management.

(3) The Minister has the management and direction of the Department and holds office during pleasure.

Deputy Minister, Associate Deputy Minister and Assistant Deputy Minister.

**5.—(1)** The Lieutenant-Governor in Council may appoint

- (a) an officer called the Deputy Minister of Education and Youth;
- (b) an officer called the Associate Deputy Minister of Education and Youth; and
- (c) an officer called the Assistant Deputy Minister of Education and Youth.

(2) The Deputy Minister shall be the deputy head of the Department and shall hold office during pleasure.

Deputy  
Minister's  
status.

(3) The Minister may prescribe functions and duties for the Associate Deputy Minister and the Assistant Deputy Minister.

Functions of  
Associate  
Deputy  
Minister and  
Assistant  
Deputy  
Minister.

(4) If there is no Deputy Minister or the Deputy Minister is absent, and unless otherwise provided by the Lieutenant-Governor in Council, the Associate Deputy Minister, or if there is no Associate Deputy Minister or the Associate Deputy Minister is absent, the Assistant Deputy Minister, or if there is no Assistant Deputy Minister or the Assistant Deputy Minister is absent, an officer or clerk named by the Minister has the powers and shall perform the duties of the Deputy Minister.

Absence of  
Deputy  
Minister.

(5) Such other officers, clerks and employees as are necessary for the proper conduct of the business of the Department shall be appointed or employed in the manner authorized by law, but, subject to the prior approval of the Lieutenant-Governor in Council, the Minister may temporarily employ such technical and other assistants as he deems necessary, and, with the like approval, fix the remuneration of and prescribe the expenses that may be incurred by those assistants in carrying out their official duties.

Other officers,  
clerks and  
employees.

6. Notwithstanding Section 5 and except where his post ceases to exist by virtue of this Act, any person who, immediately before the coming into force of this Act, was an officer, clerk or employee in the Department of Education, as such Department existed immediately before the coming into force of this Act, shall continue in his office, post or employment as if he had been appointed under this Act, but no person shall by reason only of such continuation be eligible to be classed as an established civil servant, and, where a person's post ceases to exist by virtue of this Act, he shall be entitled to be assigned a post in the Department the salary for which shall not be lower than that which was applicable to the post so ceasing to exist.

Continuation  
of staff in  
existence prior  
to this Act.

7.—(1) The Department shall have an official seal which shall be officially and judicially noticed.

Seal.

Authentication  
of seal.

(2) Whenever the official seal of the Department is used, it shall be authenticated by the signature of the Minister, or in the absence of the Minister, by the signature of either the Deputy Minister or the Associate Deputy Minister, or if there is no Deputy Minister or Associate Deputy Minister or both the Deputy Minister and the Associate Deputy Minister are absent, by the signature of the Assistant Deputy Minister, or if there is no Assistant Deputy Minister or the Assistant Deputy Minister is absent, by the signature of the officer or clerk named by the Minister under subsection (4) of Section 5.

Substitution  
of Minister,  
Deputy Minister  
and Department  
in certain cases.

**8.** Whenever in any Act or regulation heretofore enacted or made or in any order made under any Act or regulation or in any Order in Council or Order in Commission or in any contract, lease or any other document whatsoever, it is provided that any right, power, duty, liability or function is or shall be vested in or exercised or performed by, or there is mentioned or reference is made to

- (a) a minister,
- (b) a deputy minister, or
- (c) any department of the Government,

in any matter entrusted to the Minister by or under this Act, such right, power, duty, liability or function shall be vested in or exercised or performed by, and there shall be substituted in the mention or reference,

- (d) the Minister,
- (e) the Deputy Minister, and
- (f) the Department,

respectively for the officers and departments referred to in paragraphs (a), (b) and (c).

Powers,  
functions  
and duties  
of Minister.

**9.** Subject to the other provisions of this Act, the powers, functions and duties of the Minister extend to and include all matters relating to education generally, including, without limitation of the foregoing,

- (a) The Public Libraries Board established by The Public

Libraries Act and all matters relating to public libraries generally;

- (b) such co-operation with the Government of Canada or any department, agency or body under the jurisdiction of the Parliament of Canada as may be necessary or desirable for carrying out any of the purposes of this Act;
- (c) the undertaking, promotion or recommendation of measures for the development, control and direction of education;
- (d) the collection, compilation, analyzing and recording of such statistical and other information relating to education as may be useful;
- (e) the preparation and publication of statistics, reports, records, bulletins, pamphlets, circulars and other means of disseminating information and advice in relation to education as may be useful;
- (f) the study of, reporting on and advising upon the system and administration of education;
- (g) the fostering, through scientific investigation and technology, of knowledge of educational matters and of the means of dealing with any conditions relating to the development, control and direction thereof;
- (h) the training, examination, classification, grading and pensioning of teachers and the receiving of recommendations made pursuant to paragraph (b) of Section 17;
- (i) public examinations;
- (j) subject to The Memorial University Act, the Memorial University of Newfoundland;
- (k) colleges and schools receiving financial aid directly or indirectly from the province;

- (l) the furnishing to colleges and schools, at or below cost, of
  - (i) textbooks, including, without limitation of the generality of the foregoing, religious text books, and
  - (ii) audio-visual aids approved by the Minister;
- (m) assistance to and the preparation and planning of the future of youth, except where any aspect thereof is specifically assigned to another Minister or department of Government by any other Act;
- (n) the ensuring of the progress of educational institutions in the province;
- (o) the supervision and inspection of colleges and schools;
- (p) unless assigned in whole or in part to another Minister, adult, vocational and technical education;
- (q) the doing of such other things or the exercise of such other powers as are necessary or desirable for carrying out any of the purposes of this Act; and
- (r) the exercise and discharge of such other powers, functions and duties as the Lieutenant-Governor in Council assigns to the Minister.

Administration  
of Acts.

**10.** The Minister shall administer all Acts, orders and regulations, not assigned by or under any Act or law to any other Minister, relating to his powers, functions and duties under this Act.

Agreements.

**11.—(1)** Subject to the approval of the Lieutenant-Governor in Council, the Minister may enter into agreements with the Government of Canada or any agency thereof or the Government of any province of Canada or any agency thereof or with any of them providing for

- (a) the joint undertaking, by the Government of Newfoundland or any agency thereof with the Government of Canada or any agency thereof or the Government of any province of Canada or any agency thereof or with any of them, of projects relating to any aspect of any of the powers, functions or duties of the Minister entrusted to him by or under this Act;

- (b) the payment to the province of contributions in respect of the cost of any projects referred to in paragraph (a); or
- (c) any or all of the matters referred to in paragraphs (a) and (b).

(2) The Minister may, for any of the purposes of this Act, and subject to the approval of the Lieutenant-Governor in Council, cause to be prepared and undertaken alone or with Canada or any province of Canada or with any of them programmes of research and investigation, and may co-ordinate such programmes with other similar programmes being undertaken in Newfoundland or elsewhere in Canada. Research.

**12.** In carrying out any project or research programme under this Act or in pursuance of an agreement made under this Act, the Minister shall, whenever possible, make use of the services and facilities of other departments of the Government of the province. Other departments.

**13.** Subject to the approval of the Lieutenant-Governor in Council, the Minister may Agreements.

- (a) enter into any agreement for promoting the objects of this Act, including, without limitation of the foregoing, agreements with universities, educational institutions, the municipal authority exercising jurisdiction in any municipal area whatsoever in the province and agreements with any other person;
- (b) enter into any agreement for which no specific provision is made elsewhere in this Act which he deems necessary or desirable for the purpose of exercising or discharging his powers, duties or functions; or
- (c) enter into any or all of the agreements referred to in paragraphs (a) and (b).

**14.** The Minister may implement any agreement made under this Act. Implementation of agreements.

Consultation.

**15.** In exercising his powers or carrying out his duties and functions under this Act, the Minister may consult with and inaugurate conferences of representatives of such bodies or persons as he may consider advisable.

Establishment of Denominational Educational Committees.

**16.—(1)** A religious denomination for which there existed, immediately before the date of the enactment of this Act, legislative provision for a Superintendent of Education in the Department of Education, as such Department existed immediately before the date of the enactment of this Act, shall

(a) alone; or

(b) jointly with any one or more or all of the remaining such religious denominations

establish a Denominational Educational Committee outside the Department for the purpose of representing, and of being recognized by the province as representing, the religious denomination or denominations for which it is established, as the case may be, in carrying out its powers, functions and duties under this Act and any other Act in which reference is made to such Educational Committee.

Executive Secretary of Educational Committee.

(2) Each Educational Committee shall appoint as an employee thereof an Executive Secretary to act as the official channel of communication between the Educational Committee and the Minister and the Department, and such Executive Secretary shall

(a) be a member of the Educational Committee; and

(b) be a person acceptable to the Minister and be paid such salary as the Minister may approve.

Expenses of Educational Committees.

(3) The Minister shall from moneys provided by the Legislature make to each Educational Committee an adequate annual grant, based on a non-discriminatory formula, for the purpose of paying the salary of the Executive Secretary and of remunerating other necessary employees of the Educational Committee and meeting administrative expenses of the Educational Committee.

(4) An Educational Committee shall, subject to any Act of the Legislature prescribing powers, duties or functions of any or all of such persons, prescribe and assign the duties and functions of its Executive Secretary and its other employees and notify the Minister as to what duties and functions have been so prescribed and assigned.

Duties and functions of employees of Educational Committees.

(5) Before establishing an Educational Committee under subsection (1), the religious denomination or denominations concerned shall furnish the Minister with a copy of any proposed constitution, regulations, bye-laws and rules prepared for such proposed Educational Committee.

Minister to be provided with copy of proposed constitution of Educational Committee.

(6) Upon the establishment of an Educational Committee, the Educational Committee shall furnish the Minister with a copy of any constitution, regulations, bye-laws and rules thereof then in existence.

Minister to receive copy of settled constitution.

(7) As often as any constitution, regulations, bye-laws or rules of an Educational Committee are amended or made, the Educational Committee shall furnish the Minister with a copy of the constitution, regulations, bye-laws or rules as so amended or made.

Amendments to constitution of Educational Committee.

(8) The financial year of the Educational Committee shall correspond with the financial year of the province.

Financial year of Educational Committee.

(9) Each Educational Committee shall, not later than the thirtieth day of September in each year, prepare and submit to the Minister a financial statement, on a form prescribed by the Minister, setting forth the assets and liabilities of the Educational Committee and the receipts and expenditures of the Educational Committee for the previous financial year, together with a report concerning the work of the Educational Committee during the previous financial year.

Financial report of Educational Committee.

(10) Nothing in this section shall prevent any Educational Committee from

Representatives and observers from non-founding religious denominations.

(a) according representation on it to; or

(b) permitting observers at its meetings from

religious denominations not referred to in subsection (1), and where representation is accorded to any religious denomination under the provisions of paragraph (a) of this subsection (10), the Educational Committee may, unless the Educational Committee otherwise directs, represent that religious denomination as if it were one of the religious denominations for which it is established under subsection (1).

Every Educational Committee a corporation.

(11) Every Educational Committee is a corporation.

Members of House of Assembly not to be members of Educational Committees.

(12) A member of the House of Assembly or an employee of the Department shall not be a member of any Educational Committee.

Certain duties of Educational Committees.

**17.** An Educational Committee shall

- (a) with respect to the religious denomination or religious denominations represented by it, have responsibility
  - (i) for making recommendations to the Lieutenant-Governor in Council concerning
    - (A) the establishment and alteration of boundaries of school districts,
    - (B) the selection and appointment of members of School Boards, and
    - (C) the dissolution of School Boards under The Schools Act,
  - (ii) for making recommendations to the Lieutenant-Governor in Council for the purposes of Section 4 of The Education (Teacher Training) Act, and
  - (iii) subject to Section 26, for the development and administration of religious education; and
- (b) have responsibility for making recommendations to the Minister concerning the selection, training, indenturing and initial certification of teachers.

**18.** There shall be a Denominational Policy Commission consisting of the Minister, the Deputy Minister, the Associate Deputy Minister and the Executive Secretaries.

Establishment of Denominational Policy Commission.

**19.** The Minister shall be Chairman and the Deputy Minister shall be Vice-Chairman of the Commission.

Chairman and Vice-Chairman.

**20.** The Commission shall, subject however to the Minister, be responsible to advise the Lieutenant-Governor in Council on all educational policy that affects any right or privilege referred to in Section 3 of any religious denomination or religious denominations represented on the Commission by an Executive Secretary, including, without limiting the generality of the foregoing, educational policy with regard to any such right in respect to curriculum and textbooks and with regard to any such right in respect to teacher selection and training, but shall not concern itself with general educational policy, administrative or academic, which does not affect any such right or privilege.

Commission's functions

**21.**—(1) There shall be a General Advisory Committee, which shall consist of

Establishment of General Advisory Committee.

- (a) the Minister;
- (b) the Deputy Minister;
- (c) the Associate Deputy Minister, if any;
- (d) the Assistant Deputy Minister, if any;
- (e) subject to subsection (4), the Executive Secretaries;
- (f) the heads of divisions of the Department established under subsection (2) of Section 4;
- (g) two other persons appointed by the Lieutenant-Governor in Council, one of whom shall be representative of the Faculty of Education of the Memorial University of Newfoundland and the other of whom shall be representative of the Newfoundland Teachers' Association referred to in The Newfoundland Teachers' Association Act; and
- (h) one other person appointed by the Lieutenant-Governor in Council to be representative of a provincial association of School Boards, as such School Boards are defined

by The Schools Act, should such an association exist and be recognized for the purpose by the Lieutenant-Governor in Council.

Chairman and Vice-Chairman.

(2) The Minister shall be Chairman and the Deputy Minister shall be Vice-Chairman of the Advisory Committee.

Tenure of office and payment of some of members of Advisory Committee.

(3) A member of the Advisory Committee appointed under paragraph (f) of subsection (1) shall hold office during pleasure, and may be paid such allowance or remuneration and expenses, if any, as the Lieutenant-Governor in Council authorizes.

Absence of Executive Secretaries.

(4) In the absence of any Executive Secretary, a representative appointed for the purpose by the appropriate Educational Committee may act on the Advisory Committee for and in the place of such Executive Secretary and has and may exercise, during such absence, the powers and carry out the duties of such Executive Secretary with respect to the Advisory Committee.

Advisory Committee's functions.

**22.** The Advisory Committee shall, subject however to the Minister, be responsible to examine and make recommendations to the Lieutenant-Governor in Council on existing educational policy and to recommend to the Lieutenant-Governor in Council the initiation of new policy, but where such policy affects any right or privilege referred to in Section 3, the Advisory Committee shall refer the matter to the Commission for its advice thereon.

Presiding officer at meetings of Commission or Advisory Committee.

**23.—**(1) The Chairman, or in his absence, the Vice-Chairman shall preside at all meetings of the Commission or the Advisory Committee, as the case may be, and his decision on all points of order is final

Temporary chairman of Advisory Committee.

(3) If both the Chairman and the Vice-Chairman of the Commission from a meeting of the Advisory Committee, the other members of the Advisory Committee present shall appoint a temporary chairman who has and may exercise the powers and shall carry out the duties of the Chairman at the meeting.

No meeting of Commission in absence of Chairman and Vice-Chairman.

(3) If both the Chairman and the Vice-Chairman of the Commission are absent, there shall be no meeting of the Commission.

**24.**—(1) Where the members of the Commission are unanimous with respect to any recommendation to be made to the Lieutenant-Governor in Council, such recommendation shall be made to the Lieutenant-Governor in Council by the Commission.

Where members of Commission unanimous concerning recommendations.

(2) Where the members of the Commission are not unanimous concerning any recommendation considered by them, each Educational Committee shall, either alone, or jointly with another Educational Committee or other Educational Committees, make a written report thereon to the Lieutenant-Governor in Council through the Minister.

Where members not unanimous.

**25.**—(1) The Minister shall, before introducing, or advising the Lieutenant-Governor in Council to introduce, new policy requiring an Act or amendments to any Act of the Legislature respecting educational matters or requiring regulations or amendments to any regulations made under any such Act, furnish all Executive Secretaries with draft copies of such proposed Act, regulations or amendments.

Minister to furnish proposed Acts to Executive Secretaries.

(2) Nothing contained in subsection (1) of this Section 25 or in Section 20, 22 or 24 shall be deemed to bind the Minister or the province to adopt any recommendation, proposal or advice referred to in Section 20, 22 or 24.

Minister and province not bound to adopt recommendations or proposals.

**26.**—(1) Nothing contained in this Act shall be deemed to derogate from the functions and responsibility of any religious denomination referred to in subsection (1) of Section 16 with regard to the provision of religious education, and any of such functions and responsibility may be reposed by such religious denomination in an Educational Committee established under the said subsection.

Religious education.

(2) Without limitation of the generality of subsection (1) of this section, any religious denomination referred to in subsection (1) of Section 16 may, subject to any Act of the Legislature, repose in an Educational Committee established under the said subsection (1) of Section 16 full or partial responsibility for the development and administration of religious education as it affects all or any of the School Boards, schools, Boards of Directors, colleges and teachers of, or in which there is an interest of, such religious denomination and as such education pertains

Idem.

to members of such religious denomination, and such reposing of responsibility shall have effect.

Boards,  
committees  
and councils.

**27.** Subject to the other provisions of this Act, the Lieutenant-Governor in Council may establish such boards, committees and councils as he deems necessary or desirable to assist and advise the Minister in carrying out the provisions of this Act and appoint the members thereof.

Advisory  
committees.

**28.** Subject to the other provisions of this Act, in order to carry out the purposes and provisions of this Act the Minister may establish such advisory committees as he deems necessary or desirable and appoint the members thereof, and the members of such committees are entitled to be paid reasonable travelling and living expenses from and to their ordinary places of residence in the course of their duties.

Reports to  
Lieutenant-  
Governor  
in Council.

**29.** The Minister shall cause to be made and shall furnish to the Lieutenant-Governor in Council such reports of the proceedings of the Department and such other information as the Lieutenant-Governor in Council may from time to time require.

Regulations.

**30.—(1)** Subject to the approval of the Lieutenant-Governor in Council, the Minister may make regulations providing for any matters concerning which he deems regulations are necessary or desirable to carry out the purposes and provisions of this Act, including, without limitation of the foregoing, regulations

- (a) necessary or desirable for the carrying out of any of his powers, functions and duties under this Act;
- (b) providing for the management, maintenance, proper use and protection of any property, real or personal, of which he has the management and control; and
- (c) respecting any matter, whether of any of the foregoing kinds or not, necessary or advisable to carry out effectively the intent and purpose of this Act.

Penalty.

(2) The Minister may, in regulations made under subsection (1), prescribe penalties for failing to comply with or otherwise contravening any of the provisions of such regulations.

Date of effect  
of regulations.

(3) Regulations made under this section shall be published in *The Newfoundland Gazette* and have effect from the date of

publication or from such earlier or later date as may be specified in the regulations and the regulations shall be laid before the Legislature within fifteen days after they are made, if the Legislature is then in session, and, if it is not, then within fifteen days after the commencement of the next ensuing session.

**31.** The rights, duties, powers, liabilities and functions of the Minister extend and apply to those boards and other public bodies, officials, subjects, services and properties of the Crown which the Lieutenant-Governor in Council designates and assigns to the Minister and over which the Minister is given the control, regulation, management and supervision.

Powers of Minister over boards and other public bodies.

**32.** Except any deed or document referred to in subsection (4) of Section 37, no agreement, deed or other writing made or executed under this Act shall bind the Government or the Minister or be held to be the act of the Government or of the Minister unless it is signed by him or the Deputy Minister or one of the persons designated by or under subsection (4) of Section 5 to exercise the powers and perform the duties of the Deputy Minister in the circumstances therein specified and sealed with the official seal of the Department.

Seal to be affixed to documents.

**33.**—(1) Any person appointed for that purpose by the Minister may summon before him and examine on oath any persons he deems necessary respecting any matter relating to the business of the Department upon which their appearance is required and may require those persons to bring with them such papers, plans, books, documents and things as he deems necessary to examine with reference to that matter, and he may administer the oath to those persons, and they shall be paid such amounts for their time and disbursements as the Minister decides.

Power to examine persons on oath.

(2) Every person summoned in accordance with subsection (1) who neglects or refuses to attend and be examined or to bring with him such papers, plans, books, documents and things as he is required to bring is guilty of an offence and liable on summary conviction to a penalty of twenty dollars and to a further penalty of five dollars for every day during which he neglects or refuses to do so.

Penalty.

Person not excused from answering question.

(3) A person giving evidence in an examination held under this section shall not be excused from answering any question upon the ground that the answer may tend to establish his liability to a civil proceeding at the instance of the Crown or of any person or to a prosecution under any Act of the Legislature.

Answer not to be used in evidence against him.

(4) If, with respect to any question, a person referred to in subsection (3) objects to answer upon any of the grounds mentioned in that subsection and if, but for that subsection, he would therefore have been excused from answering that question, then, although that person is by reason of that subsection compelled to answer, the answer so given shall not be used or receivable against him in any civil proceeding at the instance of the Crown or of any person or in a prosecution under any Act of the Legislature.

Security for performance of agreements.

**34.** The Minister may require and take security by way of bond or deposit of money for the due performance of any agreement entered into under this Act.

Actions, etc., to be taken in the name of the Attorney General.

**35.** All actions, suits and other proceedings taken by the Minister or the Department for the enforcement of any agreement or for the recovery of damages in tort or arising out of contract or for the trial of any right in respect of any real or other property under the control of the Minister shall be instituted in the name of Her Majesty's Attorney General for Newfoundland.

Notice of action against officer.

**36.—**(1) No action shall be commenced against any officer, servant or agent of the Department for anything done by him in the course of his employment until one month after notice in writing has been delivered to him or left at his usual place of residence by the party who intends to institute the action or by his solicitor.

Contents of notice.

(2) A notice delivered under subsection (1) shall clearly and explicitly state the cause of action, the name and place of residence of the intended plaintiff and the name and address for service of his solicitor, if any.

Acquisition of property.

**37.—**(1) The Minister, for and in the name of Her Majesty in right of the province, may acquire by purchase, lease or otherwise and hold and has the management and control of any real

or personal property he deems necessary for the purposes of this Act.

(2) The Minister may

Disposal  
of property.

(a) sell; or

(b) lease, rent, hire or otherwise dispose of for such period and subject to such terms and conditions as he may stipulate,

any real or personal property of which he has the management and control.

(3) All money received by the Minister in exercise of the powers conferred on him by subsection (2) shall be paid into the Consolidated Revenue Fund.

Disposal  
of money.

(4) Whenever Her Majesty in right of the province acquires or conveys real or other property through the Minister, the Minister or either the Deputy Minister or the Associate Deputy Minister may execute all deeds and documents on behalf of Her Majesty in right of the province with his own hand and official style and with the seal of the Department.

Execution of  
deeds and other  
documents.

**38.** Power to enter into any agreement shall include power to amend any such agreement from time to time, but, if the approval of the Lieutenant-Governor in Council to the original agreement is required, such approval is also required for any amending agreement.

Power  
to amend  
agreements.

**39.—**(1) The Minister, after giving

Entry on land.

(a) to the owner of land, if he is known and available and can easily be contacted; or

(b) to the occupier of occupied land, whether or not he is the owner of the land, if he lives on any part of the land or is known and available and can easily be contacted,

such notice as to the Minister seems reasonable under the circumstances, may authorize any engineer, agent, servant or workman employed by or under him to enter into and upon the land and survey the land and make such borings or sink such trial-pits and cut such trees as he deems necessary for any purpose relative to the work under his control and if agreement cannot be reached between the Minister and the party or parties having ownership of the land as to compensation, if any, to be paid, the amount of compensation shall be ascertained in the manner provided by law for assessing the compensation payable where land is expropriated.

Fire precautions and restoration of surface.

(2) The Minister shall, by his engineers, agents, servants and workmen,

- (a) in doing anything authorized by subsection (1), exercise reasonable precautions to prevent fires; and
- (b) fill in, as soon as practicable, the borings and trial-pits referred to in subsection (1), as nearly as reasonably may be to the condition existing before the borings were made and the trial-pits were sunk.

Offence.

**40.** Every person who

- (a) obstructs or interferes with any engineer, agent, servant or workman of the Minister engaged in exercising on behalf of the Minister any power pursuant to this Act; or
- (b) interferes with any erection placed upon or work done on any land under this Act

is guilty of an offence and liable on summary conviction to a fine not exceeding one hundred dollars and in the case of a second or subsequent conviction for a similar offence to a fine not exceeding two hundred dollars and, in either case, in default of payment to imprisonment for a term not exceeding three months.

Payments.

**41.** Any payments required to be made by or on behalf of Her Majesty in right of the province pursuant to any agreement

entered into under this Act or in carrying out the provisions of this Act or the regulations shall be paid by the Minister of Finance, on the request of the Minister, out of the Consolidated Revenue Fund of the province.

**42.**—(1) Any person who fails to comply with or otherwise contravenes any of the provisions of this Act or the regulations is guilty of an offence and every person who is guilty of an offence is, where no penalty is specifically provided in this Act or the regulations, liable on summary conviction in the case of a first conviction to a fine not exceeding one hundred dollars and in the case of a second or subsequent conviction for a similar offence to a fine not exceeding two hundred dollars and, in either case, in default of payment to imprisonment for a term not exceeding three months.

Offence.

(2) For the purpose of subsection (1), a conviction is not deemed to be a second or subsequent conviction unless it is in respect of an offence committed within twelve months after a prior offence.

Offences within twelve months of each other.

**43.** Any agreement, entered into, before or after the enactment of this Act, under any Act of the province, by a person with respect to financial assistance by the province of such person for his educational purposes, shall be capable of full enforcement, notwithstanding that such person may be under the age of twenty-one years when he enters into such agreement.

Certain agreements enforceable.

**44.**—(1) In this section

Pension rights of certain Executive Secretaries.

- (a) "the said Act" means The Pensions (Premiums) Act, and any amendments thereto;
- (b) "new pension plan" means the new pension plan as defined by the said Act; and
- (c) "Superintendent" means a Superintendent of Education referred to in Section 16 of this Act and includes an Assistant to such Superintendent,

but, for the purposes of this Section 44, the expression "April 1, 1968", occurring in Section 2 of the said Act shall be read as being "April 1, 1969".

Provisions of  
The Pensions  
(Premiums)  
Act extended  
to certain  
Executive  
Secretaries.

(2) Subject to subsection (4), the provisions of the said Act shall, *mutatis mutandis*, be deemed to apply to those Executive Secretaries, who immediately, prior to their appointment as such were Superintendents.

Service  
of certain  
Executive  
Secretaries to  
be considered  
as service as  
established  
civil servants.

(3) The service of Executive Secretaries, who immediately prior to their appointment as such were Superintendents, as

- (a) established civil servants prior to their appointment as Executive Secretaries; and
- (b) Executive Secretaries

shall, subject to subsection (4), for the purposes of the new pension plan, all be considered as service as established civil servants.

Contributions  
in respect  
of service of  
Executive  
Secretaries.

(4) Service of Executive Secretaries, who immediately prior to their appointment as such were Superintendents, shall not be considered as service as established civil servants for the purposes of subsection (3) unless

- (a) deductions are made from the salaries thereof equal to the amounts and in the manner set forth in Section 3 of the said Act for and in respect of their service, as referred to in paragraph (b) of subsection (3) of this Section 44;
- (b) the deductions referred to in paragraph (a) are paid in the manner and for the purpose set forth in Section 4 of the said Act; and
- (c) any payments that, with respect to the new pension plan, are payable by the province with respect to an established civil servant for the purposes of the new pension plan, are made with respect to the Executive Secretaries.

(5) An Educational Committee, which has an Executive Secretary who, immediately prior to his appointment as such, was a Superintendent, is authorized and empowered to, and shall, make the deductions referred to in paragraph (a) of subsection (4) and pay them over according to paragraph (b) of the said subsection.

Educational Committee may make premium deductions with respect to its Executive Secretary.

(6) An Educational Committee described in subsection (5) is authorized and empowered to, and shall, make all payments referred to in paragraph (c) of subsection (4) into the Consolidated Revenue Fund for the purposes of the new pension plan, and such payments shall, subject to the new pension plan, be made in the manner and at the times prescribed by the Minister of Finance.

Payments payable by Educational Committee.

(7) Payments made under subsection (6) shall, for the purposes of Section 16 of this Act, be deemed an administrative expense of the Educational Committee making them.

Payments by Educational Committee deemed an expense of the Educational Committee.

**45.**—(1) The Lieutenant-Governor in Council may, by order, designate employees of Educational Committees, including Executive Secretaries not referred to in subsection (2) of Section 44, who shall, subject to subsection (2) of this Section 45, receive the same benefits and be subject to the same terms and conditions with respect to pensions as are applicable to established civil servants under the new pension plan referred to in Section 44.

Pension rights of certain designated employees of Educational Committees.

(2) Paragraphs (a), (b) and (c) of subsection (4) of Section 44 and subsections (5), (6) and (7) of the said section shall apply, *mutatis mutandis*, to employees of Educational Committees designated under subsection (1) of this Section 45.

Certain provisions of Section 44 apply to employees designated under subsection (1).

**46.**—(1) Any regulations made under The Department of Education Act, chapter 13 of The Revised Statutes of Newfoundland, 1952, or any statute for which the said The Department of Education Act was substituted and in force immediately before the 7th day of July, 1969, may be amended or revoked by regulations made under this Act as if they were made hereunder.

Revocation or amendment of regulations previously made.

Definition of  
"regulations".

(2) For the purposes of this section, the expression "regulations" includes any order prescribing regulations and any order made in the execution of a power given by statute.



## CHAPTER 81

### An Act Respecting the Department of Finance

1. This Act may be cited as The Department of Finance Act. Short title.
2. In this Act Interpretation.
  - (a) "Assistant Deputy Minister (Expenditure)" means the Assistant Deputy Minister (Expenditure) of Finance appointed under this Act;
  - (b) "Assistant Deputy Minister (Revenue)" means the Assistant Deputy Minister (Revenue) of Finance appointed under this Act;
  - (c) "Associate Deputy Minister" means the Associate Deputy Minister of Finance appointed under this Act;
  - (d) "Department" means the Department of Finance constituted by this Act;
  - (e) "Deputy Minister" means the Deputy Minister of Finance appointed under this Act;
  - (f) "Minister" means the Minister of Finance; and
  - (g) "regulations" means regulations made under this Act.
- 3.—(1) There shall be a department of the Government called the Department of Finance over which the Minister of Finance for the time being appointed by the Lieutenant-Governor in Council by Commission under the Great Seal of the province shall preside. Department constituted.
- (2) The Minister has the management and direction of the Department and holds office during pleasure. Management.

Deputy  
Minister,  
Associate  
Deputy  
Minister  
and Assistant  
Deputy  
Ministers.

- 4.**—(1) The Lieutenant-Governor in Council may appoint
- (a) an officer called the Deputy Minister of Finance;
  - (b) an officer called the Associate Deputy Minister of Finance;
  - (c) an officer called the Assistant Deputy Minister (Expenditure) of Finance; and
  - (d) an officer called the Assistant Deputy Minister (Revenue) of Finance.

Deputy  
Minister's  
status.

(2) The Deputy Minister shall be the deputy head of the Department and shall hold office during pleasure.

Functions of  
Associate  
Deputy  
Minister  
and Assistant  
Deputy  
Ministers.

(3) The Minister may prescribe functions and duties for the Associate Deputy Minister and the Assistant Deputy Minister (Expenditure) and the Assistant Deputy Minister (Revenue.)

Absence of  
Deputy  
Minister.

(4) If there is no Deputy Minister or the Deputy Minister is absent, and unless otherwise provided by the Lieutenant-Governor in Council, the Associate Deputy Minister, or if there is no Associate Deputy Minister or the Associate Deputy Minister is absent, either the Assistant Deputy Minister (Expenditure) or the Assistant Deputy Minister (Revenue), or if there is neither an Assistant Deputy Minister (Expenditure) nor an Assistant Deputy Minister (Revenue) or both such Assistant Deputy Ministers are absent, an officer or clerk named by the Minister has the powers and shall perform the duties of the Deputy Minister.

Other officers,  
clerks and  
employees.

(5) Such other officers, clerks and employees as are necessary for the proper conduct of the business of the Department shall be appointed or employed in the manner authorized by law, but the Minister may temporarily employ such technical and other assistants as he deems necessary and fix the remuneration of and prescribe the expenses that may be incurred by those assistants in carrying out their official duties.

Continuation  
of staff in  
existence  
prior to  
this Act.

**5.** Notwithstanding Section 4, any person who immediately prior to the commencement of this Act was an officer, clerk or employee in the Department of Finance, as such Department

existed immediately prior to the commencement of this Act, shall continue in his office, post or employment as if he had been appointed under this Act, but no person shall by reason only of such continuation be eligible to be classed as an established civil servant.

**6.**—(1) The Department shall have an official seal which shall be officially and judicially noticed. Seal.

(2) Subject to the provisions of any other Act, whenever the official seal of the Department is used, it shall be authenticated by the signature of the Minister, or in the absence of the Minister, by the signature of either the Deputy Minister or the Associate Deputy Minister, or if there is no Deputy Minister or Associate Deputy Minister or both the Deputy Minister and the Associate Deputy Minister are absent, by the signature of either the Assistant Deputy Minister (Expenditure) or the Assistant Deputy Minister (Revenue), or if there is neither an Assistant Deputy Minister (Expenditure) nor an Assistant Deputy Minister (Revenue) or both such Assistant Deputy Ministers are absent, by the signature of the officer or clerk named by the Minister under subsection (4) of Section 4. Authentication of seal.

**7.** Whenever in any Act or regulation enacted or made before the coming into force of this Act or in any order made under any Act or regulation or in any Order in Council or Order in Commission or in any contract, lease or any other document whatsoever, it is provided that any right, power, duty, liability or function is or shall be vested in or exercised or performed by, or there is mentioned or reference is made to Substitution of Minister, Deputy Minister and Department in certain cases.

(a) a minister;

(b) a deputy minister; or

(c) any department of the Government,

in any matter entrusted to the Minister by or under this Act, such right, power, duty, liability or function shall be vested in or exercised or performed by, and there shall be substituted in the mention or reference,

(d) the Minister;

(e) the Deputy Minister; and

(f) the Department,

respectively for the officers and departments referred to in paragraphs (a), (b) and (c).

Powers,  
functions and  
duties of the  
Minister.

**8.** The powers, functions and duties of the Minister extend to and include

- (a) the supervision, control and direction of all matters relating to the financial affairs and public accounts, revenue and expenditure of the province which are not, or in so far as they are not, by law or by order of the Lieutenant-Governor in Council, assigned to any other minister or department of the Government;
- (b) such co-operation with the Government of Canada or any department, agency or body under the jurisdiction of the Parliament of Canada as may be necessary or desirable for carrying out any of the purposes of this Act;
- (c) the undertaking, promotion or recommendation of measures for the control and direction of the financial affairs and public accounts, revenue and expenditure of the province;
- (d) the collection, compilation, analyzing and recording of such statistical and other information relating to the financial affairs and public accounts, revenue and expenditure of the province as may be useful;
- (e) the preparation and publication of statistics, reports, records, bulletins, pamphlets, circulars and other means of disseminating information in relation to the financial affairs and public accounts, revenue and expenditure of the province as may be useful;
- (f) the study of, reporting on and advising upon the system and administration of the financial affairs and public accounts, revenue and expenditure of the province;

- (g) the consideration and reporting upon any recommendation for a change in the laws of the province relating to the financial affairs and public accounts, revenue and expenditure of the province that is presented or made by any organization or person;
- (h) the making of inquiries into and reports upon legislation respecting financial affairs and public accounts, revenue and expenditure in force elsewhere in Canada and throughout the world and, on the basis of such inquiries and reports, making such recommendations as may be deemed advisable with regard to the laws of the province;
- (i) the doing of such other things or the exercise of such other powers as are necessary or desirable for carrying out any of the purposes of this Act; and
- (j) the exercise and discharge of such other powers, functions and duties as the Lieutenant-Governor in Council assigns to the Minister.

**9.** The Minister shall administer all Acts, orders and regulations, not assigned by or under any Act or law to any other Minister, relating to his powers, functions and duties under this Act.

Administration  
of Acts.

**10.—(1)** Subject to the approval of the Lieutenant-Governor in Council, the Minister may enter into agreements with the Government of Canada or any agency thereof or any of them providing for

Agreements.

- (a) the joint undertaking, by the Government of the province or any agency thereof with the Government of Canada or any agency thereof or by any of them, of projects relating to any aspect of any of the powers, functions or duties of the Minister entrusted to him by or under this Act;
- (b) the payment to the province of contributions in respect of the cost of any projects referred to in paragraph (a); or

- (c) any or all of the matters referred to in paragraphs (a) and (b).

Research.

(2) The Minister may, for any of the purposes of this Act, and subject to the approval of the Lieutenant-Governor in Council, cause to be prepared and undertaken alone or with Canada, programmes of research and investigation, and may co-ordinate such programmes with other similar programmes being undertaken in the province or elsewhere in Canada.

Other departments.

**11.** In carrying out any project or research programme under this Act or in pursuance of an agreement made under this Act, the Minister shall, whenever possible, make use of the services and facilities of other departments of the Government of the province.

Agreements.

**12.** Subject to the approval of the Lieutenant-Governor in Council, the Minister may

- (a) enter into any agreement for promoting any of the objects of this Act;
- (b) enter into any agreement for which no specific provision is made elsewhere in this Act which he deems necessary or desirable for the purpose of exercising or discharging his powers, duties or functions; or
- (c) enter into any or all of the agreements referred to in paragraphs (a) and (b).

Implementation of agreements.

**13.** The Minister may implement any agreement made under this Act.

Boards, committees and councils.

**14.** The Lieutenant-Governor in Council may establish such boards, committees and councils as he deems necessary or desirable to assist and advise the Minister in carrying out the provisions of this Act and appoint the members thereof.

Certain duties of Deputy Minister.

**15.** Without limitation of his powers, functions and duties under this Act, the Deputy Minister shall

- (a) under the Minister keep the accounts with the bank or banks receiving or paying public moneys, the accounts

of interest paid upon the bonds, debentures or other securities of the province and the public accounts of the province; and

- (b) classify all appropriations of public moneys, and keep records of such appropriations containing accounts, under separate and distinct heads, of every such appropriation, whether permanent or temporary, entering under each head the amounts drawn on account of such appropriation.

**16.**—(1) Subject to the approval of the Lieutenant-Governor in Council, the Minister may make regulations providing for any matters concerning which he deems regulations are necessary or desirable to carry out the purposes and provisions of this Act, including, without limitation of the foregoing, regulations

Regulations.

- (a) necessary or desirable for the carrying out of any of his powers, functions and duties under this Act;
- (b) providing for the management, maintenance, proper use and protection of any property, real or personal, of which he has the management and control; and
- (c) respecting any matter, whether of any of the foregoing kinds or not, necessary or advisable to carry out effectively the intent and purpose of this Act.

(2) The Minister may, in regulations made under subsection (1), prescribe penalties for failing to comply with or otherwise contravening any of the provisions of such regulations.

Penalty.

(3) Regulations made under this section shall be published in *The Newfoundland Gazette* and have effect from the date of publication or from such earlier or later date as may be specified in the regulations, and the regulations shall be laid before the Legislature within fifteen days after they are made, if the Legislature is then in session, and, if it is not, then within fifteen days after the commencement of the next ensuing session.

Date of effect of regulations.

**17.** The rights, duties, powers, liabilities and functions of the Minister extend and apply to those boards and other public bodies, officials, subjects, services and properties of the Crown

Powers of Minister over boards and other public bodies.

which the Lieutenant-Governor in Council designates and assigns to the Minister and over which the Minister is given the control, regulation, management and supervision.

Seal to  
be affixed  
to documents.

**18.**—(1) Subject to subsection (2) of this Section 18, to Section 22 of this Act and to the provisions of any other Act, no agreement, deed or other writing made or executed under this Act shall bind the Government or the Minister or be held to be the act of the Government or the Minister unless it is signed by the Minister or by the Deputy Minister, the Associate Deputy Minister or one of the persons designated by or under subsection (4) of Section 4 to exercise the powers and perform the duties of the Deputy Minister in the circumstances therein specified and sealed with the official seal of the Department.

Saving.

(2) Subsection (1) does not apply to transactions in the ordinary routine course of administering the affairs of the Department under this Act.

Security for  
performance  
of agreements.

**19.** The Minister may require and take security by way of bond or deposit of money for the due performance of any agreement entered into under this Act.

Actions, etc.,  
to be taken  
in the name  
of the  
Attorney  
General.

**20.** All actions, suits and other proceedings taken by the Minister or the Department for the enforcement of any agreement or for the recovery of damages in tort or arising out of contract or for the trial of any right in respect of any real or other property under the control of the Minister shall be instituted in the name of Her Majesty's Attorney General for Newfoundland.

Notice of  
action against  
officer.

**21.**—(1) No action shall be commenced against any officer, servant or agent of the Department for anything done by him in the course of his employment until one month after notice in writing has been delivered to him or left at his usual place of residence by the party who intends to institute the action or by his solicitor.

Contents  
of notice.

(2) A notice delivered under subsection (1) shall clearly and explicitly state the cause of action, the name and place of residence of the intended plaintiff and the name and address for service of his solicitor, if any.

Acquisition  
of property.

**22.**—(1) The Minister, for and in the name of Her Majesty in right of the province, may acquire by purchase, lease or other-

wise and hold and has the management and control of any real or personal property he deems necessary for the purposes of this Act.

(2) The Minister may

Disposal  
of property.

(a) sell; or

(b) lease, rent, hire or otherwise dispose of for such period and subject to such terms and conditions as he may stipulate,

any real or personal property of which he has the management and control.

(3) All money received by the Minister in exercise of the powers conferred on him by subsection (2) shall be paid into the Consolidated Revenue Fund.

Disposal  
of money.

(4) Subject to the provisions of any other Act, now or hereafter enacted, whenever Her Majesty in right of the province acquires or conveys real or other property through the Minister, the Minister or either the Deputy Minister or the Associate Deputy Minister may execute all deeds and documents on behalf of Her Majesty in right of the province with his own hand and official style and with the seal of the Department.

Execution  
of deeds  
and other  
documents.

**23.** Power to enter into any agreement shall include power to amend any such agreement from time to time, but, if the approval of the Lieutenant-Governor in Council to the original agreement is required, such approval is also required for any amending agreement.

Power to amend  
agreements.

**24.** Any payments required to be made by or on behalf of Her Majesty in right of the province pursuant to any agreement entered into under this Act or in carrying out the provisions of this Act or the regulations shall be paid by the Minister out of the Consolidated Revenue Fund of the province.

Payments.

**25.** The Minister shall annually make such reports to the Lieutenant-Governor in Council, as the Lieutenant-Governor in Council may prescribe, concerning any or all of the affairs of

Report by  
Minister.

the Department during the previous year, and such reports shall be laid before the Legislature within fifteen days after they are submitted to the Lieutenant-Governor in Council if the Legislature is then sitting, and, if it is not, then within fifteen days after the commencement of the next ensuing session.

Offence.

**26.**—(1) Any person who fails to comply with or otherwise contravenes any of the provisions of this Act or the regulations is guilty of an offence and every person who is guilty of an offence is, where no penalty is specifically provided in this Act or the regulations, liable on summary conviction in the case of a first conviction to a fine not exceeding one hundred dollars and in the case of a second or subsequent conviction for a similar offence to a fine not exceeding two hundred dollars and, in either case, in default of payment to imprisonment for a term not exceeding three months.

Offences within twelve months of each other.

(2) For the purpose of subsection (1), a conviction is not deemed to be a second or subsequent conviction unless it is in respect of an offence committed within twelve months after a prior offence, and all convictions which are not second or subsequent convictions are deemed first convictions.

Revocation or amendment of regulations previously made.

**27.**—(1) Any regulations made under The Department of Finance Act, chapter 11 of The Revised Statutes of Newfoundland, 1952, or any statute for which that Act was substituted and in force immediately before the 12th day of August, 1969, may be amended or revoked by regulations made under this Act as if they were made hereunder.

Definition of "regulations".

(2) For the purposes of this section, the expression "regulations" includes any order prescribing regulations and any order made in the execution of a power given by statute.



## CHAPTER 82

### An Act Respecting the Department of Fisheries

- 1.** This Act may be cited as The Department of Fisheries Act. Short title.
- 2.** In this Act Interpretation.
- (a) "Department" means the Department of Fisheries created by this Act;
- (b) "Minister" means the Minister of Fisheries.
- 3.—**(1) There shall be a department of the Government of Newfoundland called the Department of Fisheries over which the Minister of Fisheries for the time being appointed by the Lieutenant-Governor by Commission under the Great Seal of Newfoundland shall preside. Department constituted.
- (2) The Minister has the administration and direction of the Department and holds office during pleasure. Minister to administer Department.
- 4.—**(1) The Lieutenant-Governor in Council may appoint an officer called the Deputy Minister of Fisheries to be the deputy head of the Department and to hold office during pleasure. Deputy Minister.
- (2) Unless otherwise provided by the Lieutenant-Governor in Council, in the absence of the Deputy Minister the Assistant Deputy Minister or, if there is no Assistant Deputy Minister or the Assistant Deputy Minister is absent, an officer or clerk named by the Minister has the powers and shall perform the duties of the Deputy Minister. Who is to act in absence of Deputy Minister.
- (3) Such other officers, clerks and employees as are necessary for the proper conduct of the business of the Department shall be appointed or employed in the manner authorized by law but the Minister may, with the approval of the Lieutenant-Governor in Council, temporarily employ such technical and other assistants as he deems necessary and, with the like approval, fix the Staff.

remuneration of and prescribe the expenses that may be incurred by those assistants in carrying out their official duties.

Transfer of members of staff.

**5.** Notwithstanding Section 4, the Lieutenant-Governor in Council may, by order, designate any person who, prior to the commencement of this Act, was an officer, clerk or employee in the Fisheries Division of the Department of Fisheries and Co-operatives to fill any position in the Department and upon such designation that person shall be deemed to have been transferred to the Department on the date of the commencement of this Act, but no person shall, by reason only of such designation, be eligible to be classed as an established civil servant.

Seal of Department.

**6.**—(1) The Department shall have an official seal which shall be officially and judicially noticed.

Authentication of seal.

(2) Whenever the official seal of the Department is used it shall be authenticated by the signature of the Minister or, in the absence of the Minister, by the Deputy Minister, or the Assistant Deputy Minister if there is one, or, in the absence of the Deputy Minister and the Assistant Deputy Minister, by the signature of the officer or clerk named by the Minister under subsection (2) of Section 4.

Substitution of Department, Minister and Deputy Minister in certain Acts, regulations and orders.

**7.** Whenever in any Act or regulation heretofore enacted or made or in any order made under the authority of any Act or regulation or in any Order in Council or in any Order in Commission or in any contract, lease or other writing of the like or any other kind whatsoever

(a) it is provided that any right, power, duty, liability or function is or shall be vested in or exercised or performed by

(i) the Minister of Fisheries and Co-operatives or any officer of the Department of Fisheries and Co-operatives or of the Fisheries Division of that Department,

(ii) the Commissioner for Natural Resources or any officer of the Department of Natural Resources,

- (iii) the Minister of Marine and Fisheries or any officer of the Department of Marine and Fisheries, or
- (iv) the Minister of Lands and Fisheries or any officer of the Department of Lands and Fisheries

such right, power, duty, liability or function is and shall in matters relating to fisheries be vested in and exercised and performed by the Minister or the appropriate officer of the Department or by such other officer thereof as may be designated by the Minister, as the case may be; and

- (b) the Department of Fisheries and Co-operatives or the Fisheries Division of that Department, the Minister of Fisheries and Co-operatives, the Deputy Minister of Fisheries, the Department of Natural Resources, the Commissioner for Natural Resources, the Secretary for Natural Resources, the Department of Marine and Fisheries, the Minister of Marine and Fisheries, the Deputy Minister of Marine and Fisheries, the Department of Lands and Fisheries, the Minister of Lands and Fisheries, the Deputy Minister of Lands or the Deputy Minister of Fisheries is mentioned or referred to in matters relating to fisheries there shall in each and every case be substituted the Department of Fisheries, the Minister of Fisheries and the Deputy Minister of Fisheries, respectively.

**8.** The duties, powers and functions of the Minister extend to and include

Duties, powers and functions of Minister.

- (a) all matters over which the Legislature has jurisdiction relating to the protection, conservation and regulation of the fisheries of Newfoundland and to the encouragement and development of those fisheries generally;
- (b) the administration of those Acts, orders and regulations relating to the fisheries of Newfoundland which have not been specifically assigned to any other Minister; and

(c) such other matters as may be designated by the Lieutenant-Governor in Council.

Powers and duties of Minister.

**9.** In matters relating to fisheries, the Minister has and may exercise and shall perform all and every of the rights, liabilities, powers, duties and functions which were immediately before the date of the commencement of this Act by any Act or regulation or by any order made under the authority of any Act or regulation or by any Order in Council or Order in Commission vested in or required to be exercised or performed by the Minister of Fisheries and Co-operatives.

Powers of Minister over boards and other public bodies.

**10.** The rights, duties, powers, liabilities and functions of the Minister extend and apply to those boards and other public bodies, officials, subjects, services, and properties of the Crown which are designated and assigned to the Minister by the Lieutenant-Governor in Council and over which the Minister is given the control, regulation, management and supervision.

Boards, committees and councils.

**11.** The Lieutenant-Governor in Council may establish such boards, committees and councils as he deems necessary to assist and advise the Minister in carrying out this Act or any regulations made thereunder.

Regulations.

**12.—(1)** The Lieutenant-Governor in Council may make regulations to give effect to and carry out the objects of this Act.

Penalty.

(2) Any person who violates any regulation made under this Act is guilty of an offence and is liable upon summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding two hundred dollars or to both such fine and imprisonment and in default of payment of such fine to additional imprisonment for a term not exceeding two months.

Publication of regulations.

**13.** Regulations made under this Act shall forthwith be published in *The Newfoundland Gazette* and laid before the Legislature within fifteen days after they are made if the Legislature is then in session and, if it is not, then within fifteen days after the commencement of the next session thereof.