



**STATUTES
OF THE
PROVINCE OF NEWFOUNDLAND
1986
VOLUME I**

Passed in the Session of the House of Assembly held in the 35th year of the Reign of Her Majesty Queen Elizabeth the Second, and

being the

**SECOND SESSION OF THE
FORTIETH GENERAL ASSEMBLY**

Begun and Holden at St. John's, on Tuesday the 18th day of March, 1986 and adjourned on Tuesday, the 17th day of June, 1986.

**HIS HONOUR W. ANTHONY PADDON,
LIEUTENANT-GOVERNOR**

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NOTICE

For the convenience of the public the Table of Public General Statutes included in the back of Volume 2 indicates the section of Acts amended or repealed by other Acts. There is also included a Table of Local, Personal and Private Statutes.

The Table of Public General Statutes and Table of Local, Personal and Private Statutes should not be taken to be exhaustive. Any omissions or errors that are found should be brought to the attention of the Office of the Legislative Counsel so that the Table may be corrected in subsequent Annual Statutes of Newfoundland.

The Office of the Legislative Counsel, through its Registry of Subordinate Legislation, can advise the public whether Acts not in force on October 1, 1986 have or have not been proclaimed.

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CHAPTER 1

AN ACT RESPECTING THE TAX ON USERS
OF TOBACCO

(Assented to February 21, 1986)

Analysis

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Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

Short title 1. This Act may be cited as The Tobacco Tax Act, 1986.

Definitions 2. In this Act

(a) "collector" means a person appointed under section 18 to collect the tax;

(b) "consumer" means a person who,

(i) in the province, pur-

chases or receives delivery of tobacco, or

- (ii) brings into the province tobacco acquired outside the province,

for that person's own use or consumption or for the use or consumption by others at that person's expense, or on behalf of, or as the agent for, a principal who desires to acquire the tobacco for use or consumption by the principal or other person at the principal's expense;

- (c) "dealer" means a person who, in the province, sells or offers to sell tobacco or keeps tobacco for sale, by wholesale or by retail or by both wholesale and retail;
- (d) "deputy collector" means a person referred to in section 19;
- (e) "inspector" means a person appointed or designated as an inspector under section 39;
- (f) "Minister" means the Minister of Finance;
- (g) "motor vehicle" means a motor vehicle as defined in The Highway Traffic Act and includes a trailer as defined in that Act;
- (h) "prescribed" means prescribed by the regulations;
- (i) "registration certificate" means a registration certifi-

cate issued under The Retail Sales Tax Act, 1978;

- (j) "retail purchaser" means a person who by a sale acquires tobacco not for resale but as a consumer;
- (k) "retail sale" means a sale to a retail purchaser;
- (l) "retailer" means a person who holds a valid registration certificate and sells tobacco at a retail sale;
- (m) "return" includes any information obtained under this Act or the regulations from the records of a dealer or taxpayer, or from a third party where that information relates to the dealer or taxpayer;
- (n) "sale" means a sale for cash or on credit or a sale where the price is payable by instalments, and includes a barter, an exchange and any other contract whereby at a price or for other consideration a person gives tobacco to another;
- (o) "tax" means the tax imposed by this Act and includes all penalties and interest that are added to the tax by or under this Act;
- (p) "taxpayer" means any person who is liable to pay any money by way of tax under this Act;
- (q) "tobacco" means tobacco in any form in which tobacco is consumed and without limiting the

generality of the foregoing includes snuff;

(r) "wholesaler" means a person who sells tobacco in the province for the purpose of resale; and

(s) "wholesaler's licence" means a licence issued to a wholesaler under this Act.

Imposition of Tax

Tax levied

3. Subject to this Act, a person who acquires tobacco at a retail sale in the province shall, in respect of the consumption or use of that tobacco, pay to Her Majesty at the time of the sale a tax computed in accordance with section 9.

Importation of tobacco in motor vehicle

4.(1) A person who, at Port aux Basques, brings tobacco into the province in a motor vehicle shall immediately report the matter to an official at the nearest commercial vehicle weighing station and shall sign a declaration in a prescribed form stating the amount of tobacco that the person has brought into the province.

(2) A driver of a commercial vehicle who enters the province at Port aux Basque shall, at the time of reporting to the nearest commercial vehicle weighing station, sign a declaration in a prescribed form.

(3) Where a person making a report under subsection (1) has a wholesaler's licence or a registration certificate or is bringing the tobacco into the province on behalf of a person having such a licence or certificate and possesses an appropriate waybill or bill of lading or other appropriate documentation satis-

factory to the Minister, the Minister may require security for the tax to be collected.

(4) A person who makes a report under subsection (1) and does not have a wholesaler's licence or a registration certificate or cannot provide proof that the tobacco is being transported on behalf of a person having such a licence or certificate is deemed to be a consumer and shall, within seven days of making the report, pay to Her Majesty a tax in the amount that would be payable if the tobacco had been purchased at a retail sale in the province.

Importation
by other
means

5.(1) A person who, at a place of entry other than Port aux Basques, brings tobacco into the province shall within seven days report the matter in writing to the Minister.

(2) Where a person making a report under subsection (1) has a wholesaler's licence or a registration certificate or is bringing the tobacco into the province on behalf of a person having such a licence or certificate and possesses records or documents to that effect, the Minister may require security for the tax to be collected.

(3) A person who makes a report under subsection (1) and does not have a wholesaler's licence or a registration certificate or cannot provide proof that the tobacco is being brought into the province on behalf of a person having such a licence or certificate is deemed to be a consumer and shall, within seven days of making the report, pay to Her Majesty a tax in the amount that would be payable if the tobacco had been purchased at a retail sale in the province.

Exemption
from ss.4
& 5

6. Sections 4 and 5 do not apply to a person who brings into the province or acquires in any way other than that mentioned in section 3 tobacco in less than the following quantities:

- (a) two hundred cigarettes;
- (b) two hundred grams of tobacco;
or
- (c) twenty-five cigars.

Offence

7.(1) A person who fails to make a report or declaration as required by section 4 or 5 or makes a false report or declaration is guilty of an offence and is liable on summary conviction to the penalties set out in section 71.

(2) Where a person who fails to make a report or declaration as required by section 4 or 5 or makes a false report or declaration is found in possession of tobacco, an inspector may seize the tobacco.

(3) Tobacco seized under subsection (2) shall be forfeited to Her Majesty to be disposed of as the Minister directs.

Refund of
tax

8.(1) Where

- (a) tax has been paid in respect of tobacco that is exempted therefrom by this Act or the regulations;
- (b) tax has been paid in respect of tobacco that is stolen or destroyed before being acquired by a retail purchaser;
- (c) tax has been paid by a collector or deputy collector on behalf of another person and that person fails to remit the

tax to the collector or deputy collector; or

- (d) there has been an overpayment of tax

the Minister may, on presentation of such proof as the Minister may require, refund the tax or overpayment, as the case may be, in accordance with the method prescribed to the person who originally paid it.

(2) No refund of tax need be paid under this section unless a claim therefor has been made by the person entitled to the refund within three years from the date of the payment of the tax.

Rate of tax

9. The tax imposed on tobacco by this Act shall be computed as follows:

- (a) in the case of cigarettes, a tax of four point seventy-eight cents on every cigarette;
- (b) in the case of tobacco, other than cigarettes and cigars, a tax of one point thirty-two cents on every gram of tobacco;
- (c) in the case of cigars, a tax of
- (i) thirteen cents on every cigar the purchase price of which is seven cents or less,
- (ii) sixteen cents on every cigar the purchase price of which is more than seven cents and not more than fifteen cents,

- (iii) twenty-nine cents on every cigar the purchase price of which is more than fifteen cents and not more than twenty-five cents,
- (iv) forty-one cents on every cigar the purchase price of which is more than twenty-five cents and not more than thirty-five cents,
- (v) fifty-two cents on every cigar the purchase price of which is more than thirty-five cents and not more than forty-five cents, and
- (vi) sixty-nine cents on every cigar the purchase price of which is more than forty-five cents.

(2) Notwithstanding paragraph (a) of subsection (1), cigarettes sold by retailers in and for consumption in the following areas of the province shall be subject to the tax on tobacco at the rate of two point seventy-five cents on every cigarette:

- (a) the town of Labrador City;
- (b) the town of Wabush; and
- (c) the coastal area of southern Labrador extending from the border with the province of Quebec to and including the community of Red Bay.

Computing
tax

10.(1) The tax payable on tobacco other than cigars shall be computed separately on every package.

(2) The tax payable on cigars shall be computed separately on the purchase price of each cigar, whether or not it is sold in a package.

Purchase
price of
cigars

11. For the purpose of determining the amount of tax payable on a cigar, the purchase price shall be determined in the manner following:

(a) when a retail purchaser acquires the cigar from a dealer, "purchase price" means the price paid by the purchaser for the cigar, but if that price is not known to the collector, the "purchase price" means an amount equal to the sum of

(i) the price at which a cigar of that kind is sold at wholesale by the collector, and

(ii) an additional amount determined in accordance with a prescribed method of calculation; and

(b) when the consumer acquires the cigar otherwise than from a dealer, the "purchase price" means the price paid by the consumer for the cigar, but if that price cannot be determined or no price is paid for the cigar, the "purchase price" shall be determined in accordance with a prescribed method of calculation.

When tax
payable

12.(1) When a retail purchaser acquires tobacco from a dealer, the purchaser shall pay the tax to the dealer at the time the tobacco is purchased or delivery of the tobacco is received.

(2) If tobacco is sold on credit at a retail sale, the retail purchaser is assessable for the full amount of the tax as imposed by this Act and the tax shall be imposed when the retail sale is made.

Sale of Tobacco

Licences

13.(1) The Minister may issue to any person a licence, to be known as a wholesaler's licence, authorizing that person to sell tobacco for resale.

(2) Every wholesaler's licence shall expire at midnight on the thirty-first day of December of the calendar year in which it is issued.

(3) The Minister may at any time for cause refuse to issue or may cancel or suspend a wholesaler's licence and, without limiting the generality of the foregoing, the Minister may refuse to issue a licence to or may cancel or suspend the licence of

- (a) a person who the Minister is satisfied or has cause to believe has used or will use the licence to purchase tobacco for that person's consumption or use or who has otherwise failed to comply with a requirement of this Act or the regulations; and
- (b) a person who is under the supervision and control of a person
 - (i) whose licence has been cancelled or suspended under paragraph (a), or
 - (ii) who supervised or controlled a person whose licence has been cancell-

ed or suspended under paragraph (a).

(4) The Minister may refuse to issue a licence to a corporate person or may cancel or suspend the licence of a corporate person unless the corporate person sends to the Minister a copy of the certificate of incorporation, together with the names and addresses of the officers or directors of the corporate person holding office at the time the Minister makes the request for the names and address.

(5) Every application for a wholesaler's licence shall be made to the Minister before such date, in such form and accompanied by such fee as may be prescribed in respect of that licence.

Sale under certificate

14. No person shall sell or offer to sell tobacco at a retail sale or keep tobacco for sale at a retail sale, in the province, unless that person holds a valid registration certificate and except in accordance with any condition prescribed in respect of that certificate.

Wholesaler's licence required

15. A person shall not sell tobacco at any sale that is not a retail sale unless that person holds a valid wholesaler's licence issued under this Act.

Prohibited sales

16. No wholesaler shall sell tobacco to any person for resale at a retail sale unless that person holds a valid registration certificate.

Collection of Tax

Collecting and paying tax

17. Subject to this Act, the tax shall be collected, accounted for and paid to the Minister by such persons, at such times and in such manner as may be required by this Act or prescribed.

Collection
agreement

18.(1) The Minister may appoint as a collector a person who enters into an agreement with the Minister respecting the collection of the tax.

(2) The tax received by a collector shall be accounted for and remitted to the Minister at the time and in the manner prescribed.

(3) The Minister shall pay collectors such remuneration or allowance as may be prescribed.

Deputy
collectors

19.(1) Every licensed wholesaler or retailer, not being a collector, who sells tobacco is a deputy collector and an agent of Her Majesty for the collection of the tax.

(2) A deputy collector shall levy and collect the tax and shall, subject to subsection (3) and at the time and in the manner prescribed, pay over the tax so collected to the collector or deputy collector from whom the tobacco was acquired.

(3) Where any money by way of tax is collected on tobacco sold to a retail purchaser that was acquired by the seller otherwise than from a collector or deputy collector, that money shall be paid over to the Minister by the seller at the time and in the manner prescribed.

Liability
for tax

20.(1) Every collector, deputy collector or other person who collects any money by way of tax under this Act holds that money in trust for Her Majesty and shall pay the money over in the manner and at the time prescribed.

(2) The amount of any tax collected under this Act and not paid over as required under subsection (1)

- (a) is recoverable by action in any court of competent jurisdiction as a debt due to Her Majesty; and
- (b) until paid, is a first lien on the entire assets of the estate of the person who collected it and has priority over all other claims of any person.

Assignment
of book
debt

21. Where a collector or deputy collector makes an assignment of book debts, whether by way of specific or general assignment, or in any other manner disposes of a present or future right to collect book debts, that assignment does not include the portion of the book debts that the collector or deputy collector, as an agent of Her Majesty, charged the person to whom the collector or deputy collector sold tobacco as tax under this Act and any assignee or any other person who collects the book debts shall be deemed to be a collector or deputy collector and shall collect, remit and account under this Act for the unassigned portion of the book debts.

Application
of 1973
No. 86

22. Every person who collects the tax imposed under this Act shall be deemed to act subject to sections 72 to 75 and section 78 of The Financial Administration Act, 1973, and for all of the purposes of those sections that person is a person who has received money on behalf of Her Majesty.

Eligibility

23. Notwithstanding anything contained in any other Act, a collector or deputy collector collecting a tax or receiving a remuneration or allowance provided by or under this Act is not, by reason only of so collecting the tax or receiving a remuneration or allowance, ineligible to be elected as a member of

or to sit and vote in the House of Assembly.

Preserving
accounts

24.(1) Every person required by this Act or the regulations to keep accounts, books or records shall preserve all such accounts, books or records until the Minister consents, in writing, to their destruction.

(2) For the purposes of subsection (1) but without limiting the generality thereof, any bill, receipt or invoice referred to in section 26 is a record required to be kept by this Act.

Dealers'
records

25.(1) Every dealer shall keep records of

(a) all purchases, sales, consignments, imports and deliveries of all grades of tobacco by that dealer in the province;

(b) sales and deliveries of tobacco by that dealer to points outside the province; and

(c) quantities of tobacco on hand and quantities used in the province by that dealer.

(2) The Minister may prescribe the form in which such records shall be kept.

Retention of
invoices

26. Every dealer shall keep on file at the place of business of the dealer, every bill, receipt or invoice that relates to any purchase by that dealer of any tobacco.

Wholesaler's
invoice

27. At the time of making a sale of tobacco a wholesaler shall issue an invoice containing such information as the Minister may prescribe.

Proof of
ownership

28.(1) A person who has possession or control of more than a prescribed quantity of tobacco may be required by the Minister to show proof of ownership satisfactory to the Minister and proof that the tax has been paid.

(2) Where a person is unable to provide proof of ownership of tobacco as required by subsection (1), an inspector may seize the tobacco.

(3) Tobacco seized under subsection (2) shall be forfeited to Her Majesty to be disposed of as the Minister directs unless, within thirty days after the seizure of the tobacco, the person from whom it has been seized provides the Minister with satisfactory proof of ownership.

(4) Where a person, not being a licensed wholesaler or a retailer, establishes ownership of the tobacco to the satisfaction of the Minister but is unable to show proof that the tax has been paid the person is deemed to be a consumer who has not paid the tax and that person shall pay the tax within seven days.

(5) Where a person who is unable to show proof that the tax has been paid possesses a wholesaler's licence or a registration certificate the Minister may require security for the tax to be collected.

Availability
of returns

29.(1) Returns made under this Act shall not be made available to any person except persons authorized by the Minister to receive them.

(2) The Minister shall not authorize any person to receive returns made under this Act unless it is necessary to do so for the purposes of this Act.

- (3) The Minister may
- (a) communicate or permit to be communicated to any person employed by the Government of Canada;
 - (b) communicate or permit to be communicated to any person employed by the Government of a province

any information obtained under this Act; and

- (c) permit any person employed by the Government of Canada; or
- (d) permit any person employed by the Government of a province

to inspect or have access to any form, return or statement furnished under this Act.

(4) Subsection (3) applies only in those circumstances where

- (a) information communicated and the inspection and access permitted will not be used for any purpose other than the administration or enforcement of a law of the jurisdiction that provides for the imposition of a tax; and
- (b) with respect to paragraphs (b) and (d) only, on a reciprocal basis, similar information is communicated to the Minister by a reciprocating jurisdiction and persons employed by this province may inspect and have access to similar forms, returns and statements under the control of the reciprocating jurisdiction.

Recovery of Tax

Liability
of purchaser
for tax

30.(1) A retail purchaser, or any other person on whom the tax is imposed by this Act, is and remains liable for the tax until it has been collected.

(2) Where a wholesaler or retailer sells tobacco and fails to collect the tax imposed by this Act, the wholesaler or retailer shall immediately notify the Minister.

(3) The tax imposed by this Act may be recovered as a debt due to Her Majesty, from the retail purchaser or any other person on whom the tax is imposed, by action in any court of competent jurisdiction.

(4) Where a person selling tobacco receives a payment made as or in lieu of the tax payable under this Act, the person shall deal with the payment and account for it as tax under this Act and a person who fails to deal with and account for such payment in accordance with this Act and the regulations is guilty of the same offences and liable to the same penalties and fines as would apply if the payment were the tax payable under this Act, and the Minister may collect and receive such payment by the same remedies and procedures as are provided by this Act or the regulations for the collection and enforcement of the tax payable under this Act.

Action to
recover tax

31.(1) The amount of the tax that is due and payable or that has been collected under this Act may be recovered with costs by action in any court of competent jurisdiction as a debt due to Her Majesty.

(2) An action under subsection (1) shall be tried without a jury, and the

court may make an order as to costs in favour of or against Her Majesty.

Demand on
third party

32.(1) Where the Minister has knowledge that a person is or is about to become indebted to a retail purchaser, collector or deputy collector who has not paid or remitted the tax payable under this Act, the Minister may demand of that person that the moneys otherwise payable by that person to the retail purchaser, collector or deputy collector be in whole or in part paid to the Minister on account of the retail purchaser's, collector's or deputy collector's liability under this Act.

(2) The receipt of the Minister for moneys paid by a person in response to a demand made under subsection (1) constitutes a good and sufficient discharge of the liability of that person to the retail purchaser, collector or deputy collector to the extent of the amount set out in the receipt.

(3) A person discharging a liability to a retail purchaser, collector or deputy collector after receipt of a demand under this section is personally liable to Her Majesty in an amount that is the lesser of

- (a) the liability discharged as between that person and the retail purchaser, collector or deputy collector; and
- (b) the liability of the retail purchaser, collector or deputy collector for the taxes due and payable under this Act or that have been collected on behalf of Her Majesty, but not remitted, including interest and penalties.

Affidavit of
official

33. In a prosecution for failure to pay the tax or to collect or remit the tax, and in an action to recover moneys for which a person is liable under this Act, an affidavit by an officer of the Department of Finance sworn before a person authorized to take affidavits, that the officer has charge of the appropriate records and that after careful examination and search of those records the officer has been unable to find in a given case that a return or remittance required by this Act has been received in the department shall be received as prima facie proof that the required return or remittance has not been received or paid.

Effect of
fine or
penalty

34. The liability of a person for the payment of any tax under this Act or the liability of a person to remit the tax collected is not affected in any way by the fact that a fine or penalty has been imposed on or paid by that person in respect of a contravention of this Act.

Effect of
default

35. If a collector fails to make the returns prescribed or to pay over to the Minister any tax collected by the collector at the time prescribed therefor, the Minister may cancel the agreement with and revoke the appointment of that collector and may cancel the wholesaler's licence of the collector.

Certificate
on default
of tax

36.(1) Where default is made by a person in the payment of any tax or, any part thereof that is due and payable or that has been collected on behalf of Her Majesty under this Act, the Minister may issue a certificate stating the amount due and remaining unpaid to Her Majesty and the name of the person by whom it is payable, and file the certificate with the Registrar of the Supreme Court.

(2) Where a certificate is filed with the Registrar of the Supreme Court, it is of the same force and effect and all proceedings may be taken thereon as if it were a judgment of the Trial Division for the recovery of the amount stated in the certificate against the person named therein.

Sales in
bulk

37.(1) A person shall not dispose of tobacco through a sale in bulk without first obtaining a certificate in duplicate from the Minister

- (a) that all taxes collectable or payable by that person have been paid; or
- (b) that an arrangement satisfactory to the Minister has been entered into with that person for the payment of the taxes or for securing their payment.

(2) Where a person purchases the tobacco of another person through a sale in bulk, the purchaser is, in addition to any liability imposed by this Act for payment of the tax on any stock acquired through that sale, liable also to pay any tax due and payable under this Act by the seller of the tobacco unless the purchaser obtains from the seller a copy of the certificate issued by the Minister under subsection (1).

(3) Notwithstanding subsections (1) and (2), where a person purchases the stock of another person through a sale in bulk, the purchaser or the solicitor of the purchaser shall upon a demand of the Minister, hold back a sufficient amount of money to cover any tax that the Minister considers payable by the previous owner of the stock.

(4) The holdback given under subsection (3) may be in the form of a bond or other suitable instrument as approved by the Minister.

(5) The liability of a person who receives a demand from the Minister under subsection (3) shall be limited to the amount of the holdback under that subsection.

(6) In this section "sale in bulk" and "stock" have the same meaning as in The Bulk Sales Act.

Estimate in
default of
tax

38.(1) Where a person fails to make a return or remittance as required by this Act or the regulations, or the return or remittance of that person is not substantiated by that person's records, or where the Minister reasonably believes that an amount of tax is due and payable, the Minister may make an estimate of the amount of the tax collected by the person or payable by the person for which the person has not accounted, and the amount so estimated shall thereupon be deemed to be the tax collected or payable by that person.

(2) A person shall pay the amount estimated under subsection (1) to Her Majesty.

(3) The Minister may by notice in writing either mailed to or served on a person or the heirs, administrators, executors or assigns of the person, or the custodian or trustee in bankruptcy of the person, require the person to pay over to Her Majesty, or otherwise account for the amount estimated under subsection (1), within thirty days after the date on which the notice is mailed or served.

(4) An affidavit by an officer of the Department of Finance sworn before a

person authorized to take affidavits, that a notice given pursuant to subsection (3) has been mailed or served shall be received as prima facie proof that the amount stated therein is due and owing by the person to whom the notice is mailed or on whom the notice is served.

Enforcement

Appointment of inspectors 39. The Minister may appoint or designate persons or a class of persons as inspectors, for the purposes of this Act.

Powers of inspectors 40. An inspector may, from time to time and at all reasonable times, enter upon the business premises of a person or upon the premises where that person's tobacco or records are kept so long as it is reasonably necessary to determine compliance with this Act and may

- (a) inspect, audit or examine books of account, records, financial statements, including balance sheets and profit and loss statements, or other documents; or
- (b) ascertain the quantities of tobacco purchased, on hand, sold or used by that person, and whether the taxes collected or payable by that person have been remitted or paid to the Minister

and the person occupying or in charge of such premises shall answer all questions pertaining to those matters and shall produce for inspection such books of account, records, financial statements, including balance sheets and profit and loss statements, or other documents as the inspector may request.

Search for
tobacco or
records

41.(1) Where an inspector believes on reasonable grounds that a person is contravening or has contravened the provisions of this Act, the inspector may with a warrant issued under subsection (2)

- (a) enter and search any premises, motor vehicle, aircraft, ship or boat, cargo container or receptacle in the province for tobacco in respect of which the tax has not been paid;
- (b) make such inquiries as the inspector considers are necessary;
- (c) make copies or abstracts of any books or records that may afford evidence of a contravention of this Act; or
- (d) take away any such books or records for the purpose of making copies thereof, and the copies shall be returned forthwith to the person from whom the books and records were taken.

(2) A Provincial Court judge or justice of the peace who is satisfied by information upon oath that there are reasonable and probable grounds for believing that there is on any premises, motor vehicle, aircraft, ship or boat, cargo container or receptacle anything that there are reasonable grounds to believe will afford evidence with respect to a contravention of this Act may issue a warrant authorizing an inspector named in the warrant to enter and search those premises for tobacco in respect of which the tax has not been paid and to make such inquiries and copies of books, documents, correspondence and records as are deemed necess-

ary, subject to such conditions as may be specified in the warrant.

(3) The owner or person in charge of the premises, referred to in this section and every person found therein shall give an inspector all reasonable assistance to enable the inspector to carry out his or her duties and functions under this section and shall furnish such information as the inspector may reasonably require.

(4) Notwithstanding subsection (1), an inspector may exercise the power of search referred to in that subsection without a warrant issued under subsection (2) if the conditions for obtaining the warrant exist but by reason of exigent circumstances it would not be practical to obtain the warrant.

(5) For the purposes of subsection (4), exigent circumstances include circumstances in which the delay necessary to obtain the warrant would result in danger to human life or safety or the loss or destruction of evidence.

Detention of
vehicle

42.(1) When, upon a search of a motor vehicle, aircraft, ship or boat, cargo container or receptacle pursuant to section 41, tobacco is found in respect of which the tax has not been paid, the motor vehicle, aircraft, ship or boat, cargo container or receptacle may be detained by an inspector until the tax and any penalty imposed under this Act are paid or security satisfactory to the Minister is given for the payment thereof.

(2) The motor vehicle, aircraft, ship or boat, cargo container or receptacle detained pursuant to subsection (1) may be sold after the expiration of thirty days from the date of the detention to pay the tax and penalty and

any expenses incurred in the detention and sale, unless within that period of thirty days payment is made of the taxes and penalty imposed under this Act.

Seizure of
tobacco

43.(1) Where

- (a) a person who does not hold a valid wholesaler's licence or a valid registration certificate has possession or control of tobacco in respect of which the tax has not been paid; or
- (b) the tobacco referred to in paragraph (a) is transported or stored by or for that person or any other person, an inspector may seize, hold and, subject to subsections (3), (4) and (5), dispose of that tobacco.

(2) Where a person transports tobacco on which the tax imposed under this Act has not been paid and is not, at the time the tobacco is being transported, in possession of a bill of lading, waybill or other document showing the origin and destination of the tobacco that person is guilty of an offence.

(3) Tobacco seized under subsection (1) shall be forfeited to Her Majesty to be disposed of as the Minister directs unless, within thirty days after the seizure of the tobacco, the person from whom it has been seized

- (a) pays the tax imposed under this Act; or
- (b) furnishes security to the Minister for the collection of the tax imposed by this Act in respect of the consumption of the tobacco and has applied

for and been issued a wholesaler's licence.

(4) Where within thirty days after the seizure of tobacco under subsection (1), the person from whom it has been seized

(a) pays the tax imposed under this Act; or

(b) furnishes security to the Minister and applies for and is issued a wholesaler's licence or a registration certificate

the tobacco so seized shall be returned to that person upon payment by that person of all costs incurred by the Minister in seizing, impounding and holding the tobacco.

(5) Where, under subsection (3), a sale of tobacco is directed by the Minister, the proceeds of that sale remaining after payment of all costs incurred by the Minister in seizing, impounding, holding and disposing of the tobacco shall be paid into the Consolidated Revenue Fund.

(6) Where a person pays the tax imposed under this Act on tobacco seized under subsection (1), the person shall not receive a refund of the tax paid where the person exports the tobacco from the province after it has been returned to the person.

Actions
against

44. When a court before which any proceedings is taken against an inspector for anything done by that inspector under this Act or the regulations is satisfied that there was probable cause for the action of the inspector and that the action was not malicious, a verdict or judgment shall

not be given against the inspector for more than five cents damages for any costs of suit.

Regulations

Regulations

45. The Lieutenant-Governor in Council may make regulations

- (a) prescribing the methods of collecting the tax and other conditions or requirements affecting the collection;
- (b) prescribing the manner in and times at which the tax collected by collectors and deputy collectors and collected or payable by other persons shall be paid over to the Minister;
- (c) providing for the division of collectors into classes and prescribing what class or classes of collectors are to receive remuneration or allowance and what class or classes are not to receive remuneration or allowance;
- (d) prescribing the remuneration or allowance to be paid to collectors or any class of collectors and the time and manner of payment;
- (e) providing for the division of wholesalers into classes and prescribing that persons seeking licences as wholesalers in any specified class or classes must as a condition of their receiving such licences accept appointments as collectors;
- (f) requiring the furnishing of surety bonds by collectors and

other persons who collect taxes and prescribing the form and amount of the bonds;

- (g) providing for the accounting for any sums of money collected by collectors and deputy collectors and collected or payable by other persons under this Act and regulating the time and manner of the accounting;
- (h) prescribing the returns and statements to be made or furnished by dealers and other persons, the information to be given in such returns, statements, accounts, books and records to be made, furnished, supplied, rendered or kept;
- (i) prescribing that any or all statements, returns, records or accounts to be made, furnished or kept under this Act or the regulations may be made, furnished or kept in conjunction with and as part of statements, returns, records or accounts furnished, kept or made under The Retail Sales Tax Act, 1978 and regulations made thereunder;
- (j) prescribing the form in and the date before which all applications for wholesaler's licences may be made, the conditions which may be attached to such licences and the fees payable for such licences;
- (k) exempting tobacco of a prescribed quantity brought into the province by any tourist from the provisions of this

Act and prescribing the quantity to and the conditions under which the exemption will apply;

- (l) exempting from tax any tobacco purchased at retail or used for any purpose under any circumstances or by any class of persons;
- (m) providing the method of refunding to any retail purchaser or consumer the tax or any portion thereof paid in respect of tax exempt tobacco, and prescribing the records and material to be furnished upon any application for a refund;
- (n) providing for the payment to collectors of all or any part of money paid as tax in the case of money paid on behalf of a deputy collector, dealer or taxpayer who has defaulted in paying the tax, and prescribing the conditions to be attached to such payments;
- (o) prescribing the method of calculation for determining the purchase price of cigars in cases where such method is required by section 11;
- (p) prescribing the duties of inspectors, officers and other persons acting under this Act;
- (q) providing for the holding of inquiries into the operation of this Act and into any charge or complaint that any person has contravened any provision of this Act or the

regulations, or has made any false statement in any return or statement required to be made by this Act or the regulations, or into any other matter arising in the administration of this Act, and providing that the person holding the inquiry is to have any or all of the powers that are or may be conferred upon a commissioner under The Public Enquiries Act, including the power to take evidence under oath;

- (r) prescribing the information to be included in invoices issued by wholesalers;
- (s) prescribing the doing of any act deemed necessary or expedient for the collection of the tax, or to prevent evasion thereof; and
- (t) generally for the better carrying out of the provisions of this Act.

Administration

Prohibition
against
rebate

46. A dealer shall not advertise or hold out or state to the public or to any retail purchaser, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the dealer.

Penalty for
failure to
collect tax

47.(1) Where a person who is required by this Act to collect any tax fails to do so, that person is, notwithstanding any other penalty imposed by this Act, and without the interposition of a court, liable to and shall pay to the Minister, a penalty in an amount equal to the aggregate of

- (a) the amount of the loss sustained by the Minister by reason of the failure of that person to collect the tax; and
- (b) ten per cent of the amount of that loss, unless the Minister decides not to require that ten per cent.

(2) In any case referred to in subsection (1), the Minister may make an estimate of the amount of the loss sustained by Her Majesty and the amount so estimated shall, for the purposes of this section, be deemed to be the actual loss so sustained.

(3) The Minister may, by notice in writing either mailed to or served on the person or the person's heirs, administrators, executors or assigns, or the person's custodian or trustee in bankruptcy, require the person to pay to Her Majesty or otherwise account for the penalty imposed under subsection (1) within thirty days after the date on which the notice is mailed or served.

Sale without
wholesaler's
licence

48.(1) Where a person sells tobacco in the province for resale to a consumer other than by authority of a valid wholesaler's licence, that person is, notwithstanding any other penalty imposed by this Act and without the interposition of a court, liable to, and shall pay to the Minister, a penalty in an amount equal to the aggregate of

- (a) the amount of the tax that would have been paid on the tobacco so sold by that person if that tobacco had been purchased by a consumer; and
- (b) ten per cent of the amount determined under paragraph

(a), unless the Minister decides not to require that amount.

(2) Where a person sells tobacco in the province for resale to a consumer without holding a valid wholesaler's licence, that person is guilty of an offence and is liable on summary conviction to a fine of not less than the amount of tax that would be payable on the tobacco so sold by that person if that tobacco had been purchased by a consumer and not more than an amount equal to twice the amount of such tax so ascertained or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

(3) In any case referred to in subsection (1), the Minister may make an estimate of the amount of the loss sustained by Her Majesty and the amount so estimated shall, for the purposes of this section, be deemed to be the actual loss so sustained.

Sale without
wholesaler's
licence

49.(1) Where a person sells tobacco in the province to a consumer other than by authority of a registration certificate, that person is, notwithstanding any other penalty imposed under The Retail Sales Tax Act, 1978, and without the interposition of a court, liable to, and shall pay to the Minister, a penalty in an amount equal to the aggregate of

- (a) the amount of the tax imposed on the tobacco under this Act; and
- (b) ten per cent of the amount determined under paragraph (a) unless the Minister decides not to require that amount.

(2) In any case referred to in subsection (1), the Minister may make an estimate of the tax owing and the amount so estimated shall, for the purposes of this section, be deemed to be the amount of tax owing.

Additional
penalty

50. The Minister may, notwithstanding any other penalty imposed by this Act and without the interposition of a court,

- (a) impose a penalty of ten per cent of the amount of the tax collected or payable under this Act upon every person who fails to pay to the Minister any tax collected or payable by that person, in the manner and within the time provided by this Act or the regulations; and
- (b) impose a penalty of not less than twenty-five dollars nor more than two hundred dollars upon every person who fails to make a return required by this Act or the regulations in the manner and within the time provided therefor.

Interest

51.(1) The Minister shall levy interest upon any tax collected or payable under this Act at the rate of one and one-half per cent per month from the date that the tax should have been paid to the Minister.

(2) The Minister may, by notice in writing, either mailed to or served on the person concerned, require that person to pay over to the Minister or, otherwise account for, interest levied under subsection (1) within thirty days after the day on which the notice is mailed or served.

(3) No interest shall be levied under subsection (1) for the month in which Her Majesty receives payment of the tax.

(4) Where a certificate is issued by the Minister under section 36, the interest shall continue to be added to the amount of the tax payable as contained in the certificate.

(5) For the avoidance of doubt and without limiting the generality of paragraph (o) of section 2, the expression "tax collected or payable" in subsection (1) includes any amount previously added thereto by way of penalty.

(6) In this section "month" includes part of a month.

Penalty

52. A penalty or interest imposed by or under section 47, 48, 49, 50 or 51,

- (a) is recoverable with costs by action in the name of the Minister in any court of competent jurisdiction as a debt due to Her Majesty; and
- (b) until paid is a first lien upon the entire assets of the estate of the person owing the same and has priority over all other claims of any person.

Export of Tobacco

Notice of
export

53.(1) A wholesaler who intends to export tobacco from the province shall provide written notice of the intention to do so to the Minister not later than ten days before the shipment is to leave the province.

(2) A person who exports tobacco from the province shall compile and retain documentation satisfactory to the Minister that the tobacco has been so exported.

Amount in lieu of tax

54.(1) Where a person purchases tobacco for export from the province, that person shall pay to the dealer who sold the tobacco and the dealer who sold the tobacco shall collect and pay to the Minister an amount equal to the tax that would be payable if the tobacco were purchased at a retail sale in the province, unless the Minister otherwise directs.

(2) Where a dealer sells tobacco for export from the province and fails to collect from the purchaser an amount equal to the tax that would be payable if the tobacco were not exported from the province, the dealer shall pay to the Minister an amount equal to the tax that would be payable if the tobacco were purchased at a retail sale in the province, unless the Minister otherwise directs.

(3) A dealer shall remit an amount collected under subsection (1) or required to be paid under subsection (2) to the Minister in the same manner and at the same time as tax is required to be remitted to the Minister under this Act.

Refund of amount

55. The Minister may on application, refund an amount collected under section 54 provided that

- (a) the notice required by section 53 has been given;
- (b) an application for a refund is delivered to the Minister not more than three years after

the date on which the amount was remitted to the Minister;

- (c) invoices verifying the purchase of the tobacco and proof of payment of the amount of refund claimed are provided to the Minister;
- (d) documentary evidence satisfactory to the Minister that the tobacco exported from the province was delivered in another jurisdiction is provided to the Minister; and
- (e) certification by the jurisdiction to which the tobacco is imported from the province for consumption confirming that tax has been paid to that jurisdiction on the tobacco with respect to which the refund is being claimed or that the tobacco is exempt from tax is provided to the Minister.

Review and Appeal

Review re
wholesaler's
licence

56.(1) A person who is dissatisfied by the Minister's refusal to issue a wholesaler's licence under section 13 or by the cancellation or suspension of a wholesaler's licence may apply to the Minister for a review.

(2) The Minister, after considering an application made under subsection (1), shall confirm or alter the decision to refuse, cancel or suspend the licence, as the case may be, and shall notify the applicant accordingly.

Review of
penalty and

57.(1) A person who is dissatisfied by any penalty or interest imposed

interest

pursuant to sections 47 to 51 may, within thirty days of the date on which the penalty or interest is imposed, apply to the Minister for a review of the amount fixed.

(2) The Minister, after considering an application made under subsection (1), shall confirm or amend the amount imposed by way of penalty or interest, as the case may be, or if the Minister is satisfied that no loss has been sustained by Her Majesty, revoke the imposition of the penalty or interest and notify the person accordingly.

(3) The amount of penalty or interest fixed in the notification given under this section shall, for the purposes of this Act, be deemed to be the amount fixed by the Minister.

Review of
estimated
tax

58.(1) A person who is dissatisfied with the amount contained in the estimate of tax by the Minister under section 38 may, within thirty days of receiving the notice in writing under that section, apply to the Minister for a review.

(2) The Minister, after considering an application made under subsection (1), shall confirm, amend or revoke the estimate and notify the person accordingly.

Affidavit of
official

59. An affidavit by an officer of the Department of Finance sworn before a person authorized to take affidavits that a notice given pursuant to section 56, 57 or 58 has been mailed or served shall be received as prima facie proof that the amount stated therein is due and owing by the person to whom the notice was mailed or on whom it was served.

Appeal to
District
Court

60.(1) A person may appeal to a judge of the District Court if

- (a) the person feels aggrieved by a review under section 56 relating to a suspension or cancellation of or a refusal to issue a wholesaler's licence;
- (b) the person feels aggrieved by a penalty or interest, as confirmed or amended by the Minister under section 57; or
- (c) the person disputes the amount of estimated tax confirmed or amended by the Minister under section 58, or the liability therefor.

(2) In order to appeal under subsection (1), the appellant must within thirty days after the notification under section 56, 57 or 58, as the case may be, has been mailed to or served on the appellant, file a notice of appeal in the office of the District Court in the judicial centre wherein the appellant resides or carries on business.

(3) The notice of appeal under subsection (2) shall set out the grounds of the appeal and a copy of the notice shall be served on the Minister.

(4) The appellant shall, within fourteen days after service of a copy of the notice of appeal on the Minister under subsection (3), apply to a judge of the District Court for the appointment of a day for the hearing of the appeal and shall, not less than fourteen days before the day appointed for the hearing, serve on the Minister a written notice of that day.

(5) The appeal and the evidence adduced thereon by the appellant and Her Majesty shall be heard by the judge in a summary manner and the judge shall decide the appeal

(a) by upholding, reducing or cancelling

(i) the suspension or cancellation of or refusal to issue a licence as confirmed or altered by the Minister,

(ii) the penalty or interest as confirmed or amended by the Minister, or

(iii) the estimate of tax as confirmed or amended by the Minister; or

(b) by rendering such other decision as the judge considers proper in the circumstances.

(6) All papers and documents in the possession of the Minister and affecting the matter of the appeal shall be produced before the judge on the hearing of the appeal.

(7) The costs of the appeal are in the discretion of the judge who hears the appeal and the judge may make an order respecting costs in favour of or against Her Majesty and may fix the amount thereof.

Appeal to
Court of
Appeal

61.(1) An appeal may be taken to the Court of Appeal from a decision of a judge of the District Court upon any point of law raised upon a hearing before the judge under section 60.

(2) The rules governing appeals to the Court of Appeal from a decision of a

judge of the District Court apply to appeals under this section.

Irregularity
in estimates

62. An estimate of tax made by the Minister and confirmed or amended under section 58 shall not be varied or disallowed because of any irregularity, informality, omission or error on the part of a person in the observation of a directory provision of this Act or the regulations up to the date of the issuing of the notice of the estimate.

Effect of
delay

63. Neither the giving of a notice of appeal by a person nor a delay in the hearing of that appeal

(a) affects in any way

(i) the due date of any tax or part thereof imposed under this Act that is the subject-matter of an appeal,

(ii) the interest or penalties provided by this Act in respect of any tax as due and payable, or

(iii) any liability for payment of any tax provided by this Act; or

(b) delays in any way the collection of any tax,

but if the tax is set aside or reduced on appeal, the Minister shall refund to the person entitled thereto the excess of tax paid and of any additional penalty or interest paid thereon.

Remission

64.(1) Notwithstanding any other Act or any other provision of this Act, the Minister may remit any penalty or interest imposed under sections 47 to 51.

(2) A remission under this section may be total or partial, conditional or unconditional, and may be granted whether before or after or pending any suit or proceeding for the recovery of any penalty or interest and before or after any payment thereof has been made or enforced by process or execution.

Application
of 1973
No. 86

65. Subsections (3) and (4) of section 19 of The Financial Administration Act, 1973 apply, with such modifications as the circumstances require, to remissions under section 61.

Offences

Offence:
illegal sale
of tobacco

66. A person is guilty of an offence

- (a) who, not being a retailer, sells tobacco to a retail purchaser;
- (b) who being a retailer, sells tobacco to a retail purchaser otherwise than in accordance with any condition provided in respect of a registration certificate;
- (c) who being a wholesaler, sells tobacco for resale by retail sale to any person who is not a retailer; or
- (d) who, not having a valid wholesaler's licence, sells tobacco to a retailer.

Offence:
failure to
keep accounts

67. A person who fails to preserve any account, book or record in accordance with section 24 is guilty of an offence and liable on summary conviction to a fine of not less than one hundred dollars and not more than five thousand dollars.

- Offence: obstructing search
68. A person is guilty of an offence who
- (a) interferes with or hinders any person conducting an inspection, examination or search under this Act;
 - (b) refuses to answer any questions put to that person in accordance with section 40 or 41; or
 - (c) fails to produce for inspection when requested to do so any books of account, records, financial statements including balance sheets and profit and loss statements, or other documents or any tobacco that the person has possession or control of.
- Offence: failure to collect tax
69. A person is guilty of an offence
- (a) who, being required by this Act or the regulations to collect the tax, fails to do so; or
 - (b) who, being required by this Act or the regulations to make returns or to pay money to the Minister or to any other person, fails to do so by the date fixed therefor.
- Offence: general
- 70.(1) A person is guilty of an offence
- (a) who contravenes this Act or the regulations;
 - (b) who fails otherwise to comply with any requirement or obligation imposed on that person

by or under this Act or the regulations; or

- (c) who makes a false statement in any form or return completed or made under this Act or the regulations,

in circumstances in which such contravention, failure or false statement is not an offence under any other provision of this Act.

(2) Every contravention, failure or false statement described in subsection (1) that relates to a separate sale or transaction constitutes a separate offence.

Penalty

71.(1) Every person who is guilty of an offence under this Act or the regulations for which no other penalty has been prescribed is liable on summary conviction

- (a) for a first offence to a fine of not less than two hundred dollars nor more than ten thousand dollars or to imprisonment for a term of not more than six months or to both the fine and imprisonment;
- (b) for a second offence to a fine of not less than five hundred dollars nor more than ten thousand dollars or to imprisonment for a term of not more than six months or to both the fine and imprisonment; and
- (c) for a third or subsequent offence to a fine of not less than one thousand dollars nor more than ten thousand dollars and to imprisonment for a term of not less than two weeks nor more than six months.

(2) In addition to the penalties imposed under subsection (1) a court shall order the person found guilty of an offence to pay any tax due under this Act and, in default of the payment of the tax, the court shall order that person imprisoned for a term of not less than one month or more than six months.

(3) A period of imprisonment imposed under subsection (2) shall be served consecutively to a term imposed under subsection (1).

Corporate
liability

72. When a corporation is guilty of an offence under this Act and an officer, director or agent of the corporation directed, authorized, assented to, acquiesced in or participated in the commission of the offence, that officer, director or agent is a party to and guilty of the offence and is liable on summary conviction to the punishment provided for that offence whether or not the corporation has been prosecuted or convicted.

Liability of
directors

73.(1) For the avoidance of doubt, in addition to the penalties imposed under section 71, where a corporation is guilty of an offence for failing to pay the tax due by the corporation under this Act or the regulations and an officer, director or agent of that corporation has been convicted of directing, authorizing or participating in the commission of that offence, the court shall order that director or agent to pay the tax for which the corporation has been convicted of failing to pay and in default of the payment of that tax, the court shall order that officer, director or agent imprisoned for a term of not less than one month or more than six months.

(2) In any prosecution under this section, an officer, director or agent

of a corporation is not liable to pay the tax for which the corporation has been convicted of failing to pay under subsection (1) where that officer, director or agent shows that the degree of care, diligence and skill to prevent the failure that a reasonably prudent person would have exercised in comparable circumstances was exercised.

(3) Notwithstanding section 75, no action or proceedings to recover an amount payable by an officer, director or agent of a corporation under this section shall be commenced more than four years after that officer, director or agent last ceased to be an officer, director or agent of that corporation.

Non-applica-
tion of
Criminal
Code

74. Sections 662.1 and 663 of the Criminal Code (Canada) shall not be applied in disposing of a complaint made or in imposing punishment for an offence under this Act.

No time
limitation

75. A complaint may be made and all proceedings may be taken thereon in respect of any offence under this Act or the regulations, without any limitation of time.

Consolidated
Revenue Fund

76. All amounts received by the Minister by way of tax form part of the Consolidated Revenue Fund.

Computer
print-outs

77. In any court proceeding taken under this Act the Crown may, in support of its case, produce copies of computer print-outs duly certified as correct copies by the Comptroller General or a designate of the Comptroller General.

Transitional

RSN 1970
c.374 in
transition

78.(1) In this section "former Act" means The Tobacco Tax Act, 1978 as amended.

(2) After the coming into force of this Act no tax shall be imposed or collected under the former Act in respect of any sale of tobacco occurring after that time or in respect of any transaction or dealing occurring after that time.

(3) In respect of any sale of tobacco or other transaction or dealing occurring before the coming into force of this Act, the former Act applies in all respects as though this Act had not been passed.

(4) To enable a more convenient transition from the former Act to this Act, the provisions of subsection (2) of section 28 of The Interpretation Act operate and shall be applied as though this Act were substituted for the former Act and the former Act were repealed by this Act.

Consequential

1973 No.79

79. Subsection (1) of section 3 of The Proceedings Against the Crown Act, 1973 is amended by inserting the words and figures "The Tobacco Tax Act, 1986" immediately after the words "The Tobacco Tax Act, 1978".

Commencement

80. This Act comes into force on a day to be proclaimed by the Lieutenant-Governor in Council.



CHAPTER 2

AN ACT FOR GRANTING TO HER MAJESTY
CERTAIN SUMS OF MONEY FOR DEFRAYING
CERTAIN EXPENSES OF THE PUBLIC SERVICE
FOR THE FINANCIAL YEAR ENDING THE THIRTY-
FIRST DAY OF MARCH ONE THOUSAND NINE
HUNDRED AND EIGHTY-SEVEN AND FOR OTHER
PURPOSES RELATING TO THE PUBLIC SERVICE

(Assented June 17, 1986)

Analysis

Section:

1. Short title
2. Interim Supply 1986-87

Section:

3. Commencement
Schedule

MAY IT PLEASE YOUR MAJESTY-

WHEREAS it appears that the sums hereinafter mentioned are required to defray certain expenses of the Public Service of Newfoundland for the financial year ending the thirty-first day of March one thousand nine hundred and eighty-seven and for other purposes relating to the Public Service:

MAY IT THEREFORE PLEASE YOUR MAJESTY THAT-

Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

Short
title

1. This Act may be cited as The Interim Supply Act, 1986.

Interim
Supply
1986-87

2. From and out of the Consolidated Revenue Fund there may from time to time be issued by the Minister of Finance sums not exceeding seven hundred and fifteen million three hundred and

thirty thousand nine hundred dollars (\$715,330,900) and the said sums so issued shall be paid and applied by the several Heads of Expenditure in respect of the financial year extending from the first day of April one thousand nine hundred and eighty-six to the thirty-first day of March one thousand nine hundred and eighty-seven towards defraying the charges and expenses of the Public Service of Newfoundland as set forth in the Schedule.

Commencement 3. This Act is deemed to have come into force on the first day of April, 1986.

SCHEDULE

<u>Head of Expenditure</u>	<u>Amount</u>
Consolidated Fund Services	\$ 545,000
Executive Council	2,222,800
Finance	15,800,600
Legislature	2,129,500
Public Works & Services	40,779,700
Development & Tourism	10,437,400
Environment	6,369,800
Fisheries	7,431,700
Forest Resources & Lands	13,866,300
Mines and Energy	20,953,300
Newfoundland and Labrador Housing Corporation	2,880,000
Rural, Agricultural & Northern Development	15,142,300
Transportation	132,696,100
Career Development & Advanced Studies	51,633,500
Consumer Affairs & Communications	592,800
Culture, Recreation & Youth	10,613,700
Education	107,935,800
Health	178,283,200

Justice	21,744,700
Labour	1,509,600
Municipal Affairs	29,901,300
Social Services	<u>41,861,800</u>
	\$ <u>715,330,900</u>



CHAPTER 3

AN ACT FOR GRANTING TO HER MAJESTY
CERTAIN SUMS OF MONEY FOR DEFRAYING
CERTAIN EXPENSES OF THE PUBLIC SERVICE
FOR THE FINANCIAL YEAR ENDING THE THIRTY-
FIRST DAY OF MARCH ONE THOUSAND NINE
HUNDRED AND EIGHTY-SEVEN AND FOR OTHER
PURPOSES RELATING TO THE PUBLIC SERVICE

(Assented to June 17, 1986)

Analysis

Section:

- 1. Short title
- 2. Further supply
1986-87

Section:

- 3. Effect of
authorization
Schedule

MAY IT PLEASE YOUR MAJESTY-

WHEREAS it appears that the sums hereinafter mentioned are required to defray certain expenses of the Public Service of Newfoundland for the financial year ending the thirty-first day of March one thousand nine hundred and eighty-seven and for other purposes relating to the Public Service:

MAY IT THEREFORE PLEASE YOUR MAJESTY THAT -

Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

Short
title

- 1. This Act may be cited as The Supply Act, 1986.

Further
supply
1986-87

- 2. From and out of the Consolidated Revenue Fund there may from time to time be issued by the Minister of Finance sums not exceeding one billion four hundred and eleven million five

hundred and seventy-three thousand nine hundred dollars (\$1,411,573,900.00) in addition to the sum of seven hundred and fifteen million three hundred and thirty thousand nine hundred dollars (\$715,330,900.00) authorized by The Interim Supply Act, 1986, the aggregate of the sums authorized to be issued under this Act and The Interim Supply Act, 1986 being two billion one hundred and twenty-six million nine hundred and four thousand eight hundred dollars (\$2,126,904,800.00).

Effect of authorization 3. The sums authorized to be issued by this Act as set forth in the Schedule shall be paid and applied by the several Heads of Expenditure in respect of the financial year extending from the first day of April, 1986 to the thirty-first day of March, 1987 towards defraying the charges and expenses of the Public Service of Newfoundland as set forth in the Schedule.

SCHEDULE

<u>Head of Expenditure</u>		<u>Amount</u>
Consolidated Fund Services	\$	1,555,000
Executive Council		5,503,800
Finance		25,507,100
Legislature		4,919,700
Public Works & Services		63,770,900
Development & Tourism		16,447,300
Environment		2,592,400
Fisheries		19,255,300
Forest Resources & Lands		16,192,100
Mines & Energy		66,666,100
Newfoundland and Labrador Housing Corporation		9,370,000
Rural, Agricultural & Northern Development		21,926,300
Transportation		55,321,400
Career Development & Advanced Studies		115,308,000
Consumer Affairs & Communications		1,513,400

Culture, Recreation & Youth	17,777,200
Education	298,948,200
Health	414,359,600
Justice	53,911,800
Labour	4,644,200
Municipal Affairs	73,102,000
Social Services	<u>122,982,100</u>
	\$ <u>1,411,573,900</u>



CHAPTER 4

AN ACT FOR GRANTING TO HER MAJESTY CERTAIN SUMS OF MONEY FOR DEFRAYING CERTAIN EXPENSES OF THE PUBLIC SERVICE FOR THE FINANCIAL YEAR ENDING THE THIRTY-FIRST DAY OF MARCH ONE THOUSAND NINE HUNDRED AND EIGHT-SIX AND FOR OTHER PURPOSES RELATING TO THE PUBLIC SERVICE

(Assented to June 17, 1986)

Analysis

Section:	Section:
1. Short title	Schedule
2. Supplementary Supply 1985-86	

MAY IT PLEASE YOUR MAJESTY-

WHEREAS it appears that the sums hereinafter mentioned are required to defray certain expenses of the Public Service of Newfoundland for the financial year ending the thirty-first day of March one thousand nine hundred and eighty-six and for other purposes relating to the Public Service:

MAY IT THEREFORE PLEASE YOUR MAJESTY THAT -

Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

- | | |
|------------------------------|--|
| Short title | 1. This Act may be cited as <u>The Supplementary Supply Act, 1986.</u> |
| Supplementary Supply 1985-86 | 2. From and out of the Consolidated Revenue Fund there may from time to time be issued by the Minister of Finance sums not exceeding fifty-two |

million five hundred and thirty-six thousand four hundred dollars (\$52,536,400) and the said sums so issued shall be paid and applied by the several Heads of Expenditure in respect of the financial year extending from the first day of April one thousand nine hundred and eighty-five to the thirty-first day of March one thousand nine hundred and eighty-six towards defraying the charges and expenses of the Public Service of Newfoundland as set forth in the Schedule.

SCHEDULE

<u>Head of Expenditure</u>	<u>Amount</u>
Finance	\$ 11,272,200
Environment	60,000
Fisheries	2,850,000
Forest Resources & Lands	1,000,000
Mines and Energy	426,000
Rural, Agricultural and Northern Development	1,845,000
Transportation	1,300,000
Career Development & Advanced Studies	3,500,000
Culture, Recreation & Youth	410,000
Education	15,123,200
Health	2,950,000
Labour	125,000
Social Services	<u>11,675,000</u>
	\$ <u>52,536,400</u>



CHAPTER 5

AN ACT TO AMEND THE DISTRICT COURT ACT,
1976

(Assented to June 17, 1986)

Analysis

Section:

- 1. S.7(1) R&S.
Composition of court
- 2. Judicature Act, 1984

Section:

- Amdt.
Supreme Court
- 3. Commencement

Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

1975-76
No.69
as amended

1. Subsection (1) of section 7 of The District Court Act, 1976 is repealed and the following substituted:

"(1) The District Court of Newfoundland shall consist of a chief judge, to be styled the Chief Judge of the District Court, and ten other judges."

Consequential Amendment

Judicature
Act, 1984

2. Section 21 of The Judicature Act, 1984 is repealed and the following substituted:

"21. The Supreme Court consists of nineteen judges, one being a chief justice, who shall be called Chief Justice of the Supreme Court, and eighteen other judges, who shall be called Judges of the Supreme Court."

Commencement

3. This Act comes into force on a day to be proclaimed by the Lieutenant-Governor in Council.



CHAPTER 6

AN ACT TO AMEND THE JUSTICES AND OTHER
PUBLIC AUTHORITIES (PROTECTION) ACT

(Assented to June 17, 1986)

Analysis

Section:

1. S.19 Rep.
Notice of action and
limitation

Be it enacted by the Lieutenant-Governor and House of
Assembly in Legislative Session convened, as follows:

RSN 1970
c.189

1. Section 19 of The Justices
and Other Public Authorities (Protect-
ion) Act is repealed.



CHAPTER 7

AN ACT TO AMEND THE QUEEN'S COUNSEL ACT

(Assented to June 17, 1986)

Analysis

Section:

1. S.2(2) R&S.
Appointment of Queen's
Counsel

Section:

2. S.3(2) Added
Deputy Attorney
General

Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

1975-76
No. 37

1.(1) Subsection (2) of section 2 of The Queen's Counsel Act is amended by striking out the word "three" and by substituting the word "five".

(2) Section 2 of the said Act is further amended by adding immediately after subsection (4) the following:

"(5) Notwithstanding subsection (4), a person may be appointed under this section if that person has an accumulation of at least ten years standing at the Bar of the province and the Bar of another province."

2. Section 3 of the said Act is amended by renumbering it as subsection (1) of section 3 and by adding immediately after subsection (1) the following:

"(2) Notwithstanding anything in section 2, upon the appointment

of a person who is a member of the Bar of the province to the office of Deputy Attorney General and Deputy Minister of Justice for the province, if that person is not then one of Her Majesty's Counsel learned in the law for the province, the Lieutenant-Governor in Council shall, by letters patent under the Great Seal, appoint that person as one of Her Majesty's Counsel learned in the law, for the province."



CHAPTER 8

AN ACT TO AMEND THE LAW SOCIETY ACT, 1977

(Assented to June 17, 1986)

Analysis

Section:

- 1. S.6(n) R&S.
Powers
- 2. S.44(1) Amdt.
Discipline Committee

Section:

- 3. S.82 R&S.
Fees for Law Society
- 4. S.83(4) Rep.
Annual certificate for
new members

Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

1977 c.77
as amended

1. Paragraph (n) of section 6 of The Law Society Act, 1977 is repealed and the following substituted:

"(n) confer upon suitable persons honorary or life membership in the Society subject to such rules as it may prescribe in that behalf;"

2. Subsection (1) of section 44 of the said Act is amended by striking out the word "thirteen" and by substituting the word "twenty-five".

3. Section 82 of the said Act is repealed and the following substituted:

Fees for Law
Society

"82.(1) The fee for every writ, whether mesne or final, issued by a solicitor out of the District Court or out of the Trial Division shall be paid to the Reg-

istrar of the Supreme Court for the Society and when received shall be paid by the Registrar to the Secretary for the purposes of the Society.

(2) The fee referred to in subsection (1) shall be set by order of the Lieutenant-Governor in Council.

(3) The order referred to in subsection (2) is subordinate legislation for the purposes of The Statutes and Subordinate Legislation Act."

4. Subsection (4) of section 83 of the said Act is repealed.



CHAPTER 9

AN ACT TO AMEND THE DEPARTMENT OF JUSTICE ACT

(Assented to June 17, 1986)

Analysis

Section:

Section:

- | | |
|--|-----------------------------------|
| 1. Sections Added | S.16 Limits, etc. approved |
| S.13 Agreements with other jurisdictions | S.17 Implementation of agreements |
| S.14 Agreements generally | S.18 Other departments |
| S.15 Power to amend agreements | |

Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

RSN 1970 c.85 as amended 1. The Department of Justice Act is amended by adding immediately after section 12 the following:

"Agreements

Agreements with other jurisdictions

13.(1) Subject to the approval of the Lieutenant-Governor in Council, the Minister may enter into agreements with the Government of Canada or of any province of Canada or any agency of any such Government providing for

- (a) the joint undertaking, by the Government of the province or any agency thereof with any of those Governments, or any agency thereof, of projects relating to any

aspect of any of the powers, functions or duties of the Minister entrusted to the Minister by or under this Act;

- (b) the payment by or 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 with any province of Canada, programs of research and investigation, and may coordinate such programs with other similar programs being undertaken in the province or elsewhere in Canada.

Agreements
generally

14. 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 the Minister deems necessary or desirable for the purpose of exercising or discharging the Minister's powers, functions or duties; or

- (c) enter into any or all of the agreements referred to in paragraphs (a) and (b).

Power to
amend
agreements

15.(1) 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.

(2) Where the Minister may enter an agreement, the terms, conditions and monetary limits subject to which the Minister may enter the agreement, are terms, conditions and monetary limits subject to which the agreement, as amended, may be entered into; but if an amendment to an agreement results in the agreement, as amended, exceeding or violating the terms, conditions or monetary limits, the Minister may enter the amendment only subject to the approval of the Lieutenant-Governor in Council.

Limits, etc.
approved

16. Notwithstanding that the approval of the Lieutenant-Governor in Council is required for an agreement under section 13 or 14, the Lieutenant-Governor in Council may, from time to time, approve terms, conditions and monetary limits subject to which the Minister may, without prior approval of the Lieutenant-Governor in Council, enter into agreements under section 13 or 14; and subject to those terms, conditions and limits the Minister may enter the agreements

without approval of the Lieutenant-Governor in Council.

Implementation
of agreements

17. The Minister may implement any agreement made under this Act.

Other
departments

18. In carrying out any project or research program 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."



CHAPTER 10

AN ACT TO AMEND THE DEPARTMENT OF ENVIRONMENT ACT

(Assented to June 17, 1986)

Analysis

Section:

- 1. S.39.1 Added
Action to recover costs

Section:

- 2. S. 48(1) Amdt.
Offences

Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

1981 c.10
as amended

1. The Department of Environment Act is amended by adding immediately after section 39 the following:

Action to recover costs

"39.1 Where pollution occurs and the person or municipal authority that the Minister considers responsible for the occurrence of the pollution fails to do the things that the Minister considers are appropriate to prevent, control, eliminate or ameliorate the pollution, the Minister may take appropriate action to prevent, control, eliminate or ameliorate the pollution and the costs incurred by the Minister in taking that action are a debt due Her Majesty and are recoverable from the person or municipal authority that the Minister considers responsible for the occurrence of the pollution."

2. Subsection (1) of section 48 of the said Act is amended

- (a) in paragraph (a) by striking out the words "ten thousand dollars" and substituting the words "twenty-five thousand dollars"; and
- (b) in paragraph (b) by striking out the words "one hundred dollars" and substituting the words "one thousand dollars".



CHAPTER 11

AN ACT TO AUTHORIZE THE RAISING OF MONEY
BY WAY OF LOAN BY THE PROVINCE

(Assented to June 17, 1986)

Analysis

Section:

1. Short title
2. Loan authorized
3. Limitation

Section:

4. Authority supplemental
5. Limitation under 1985 c.4

Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

Short title

1. This Act may be cited as The Loan Act, 1986.

Loan authorized

2. The Lieutenant-Governor in Council is hereby authorized to raise from time to time by way of loan, in the manner prescribed in subsection (1) of section 37 of The Financial Administration Act, 1973,

- (a) such sums of money as are required for the Consolidated Revenue Fund to make good, in whole or in part, any actual or estimated deficiencies between provincial revenue and expenditures, or to provide for expenditures made or to be made therefrom;
- (b) such sums of money as may be required, or may have been required since April 1, 1986, to retire, repay, renew or

refund, in whole or in part, any securities issued under this or any other Act; and

- (c) such sums of money as may be paid, or may have been paid since April 1, 1986 into the Newfoundland Government Sinking Fund or any other sinking fund established for the retirement or repayment, in whole or in part, of any securities issued under this Act or any other Act.

Limitation

3. The principal amount of any securities issued under the authority of this Act shall not exceed in the aggregate the sum of two hundred and seventy-five million dollars (\$275,000,000) in addition to the aggregate of

- (a) all sums of money applied since April 1, 1986 to the retirement, repayment, renewal or refunding, in whole or in part, of any securities issued under this or any other Act; and
- (b) all sums of money applied since April 1, 1986 to the Newfoundland Government Sinking Fund or any other sinking fund established for the retirement or repayment, in whole or in part, of any securities issued under this or any other Act.

Authority
supplemental

4. Subject to section 5, the sums of money authorized by section 2 to be raised for the purposes mentioned in that section are in addition to all sums of money authorized to be raised by way of loan under any other Act.

Limitation
under 1985
c.4

5. Notwithstanding The Loan Act, 1985, the Lieutenant-Governor in Council may not, after the coming into force of this Act, raise by way of loan any further sums of money under The Loan Act, 1985.



CHAPTER 12

AN ACT TO REVISE AND REFORM THE LAW RESPECTING CORPORATIONS

(Assented to June 17, 1986)

Analysis

Section:

1. Short title
 2. Interpretation
 3. Use of "shall"
 4. Use of "may"
 5. Use of "must"
 6. Purposes of Act
 7. Application of Act
 8. Certain incorporations halted
 9. Prohibited associations
 10. Affiliated corporations
 11. Control of a body corporate
 12. Holding & subsidiary bodies corporate
 13. Distribution to the public
- PART I
INCORPORATION
14. Power to incorporate
 15. Articles of incorporation
 16. Special majorities
 17. Delivery of articles
 18. Certificate of incorporation
 19. Effect of certificate
 20. Name of corporation
 21. English-French form of name
 22. Name in any language

Section:

23. Designating number
 24. Prohibited names
 25. Directing change of name
 26. Name of continued corporation
 27. Revoking name
 28. Certificate of amendment of name
 29. Pre-Incorporation contracts
- PART II
CAPACITY AND POWERS
30. Corporate capacity
 31. Restricted business
 32. Effect of restricted acts
 33. No constructive notice
 34. Assertions of corporate incapacity
 35. Corporate seal
- PART III
REGISTERED OFFICE AND RECORDS
36. Registered office
 37. Notice of registered office
 38. Corporate records

Section:

- 39. Director's records
- 40. Accounting records out of province
- 41. Records of continued corporations
- 42. Form of records
- 43. Duty of care: records
- 44. Access to corporate records
- 45. Basic shareholder lists
- 46. Share options list
- 47. Use of shareholder list

PART IV
CORPORATE FINANCE

- 48. Shares
- 49. One class of shares
- 50. Classes of shares
- 51. How shares issued
- 52. Consideration for shares
- 53. Shares non-assessable
- 54. Stated capital accounts
- 55. Open-end mutual funds
- 56. Shares in series
- 57. Pre-emptive rights
- 58. Instruments evidencing rights
- 59. When shares issued
- 60. Corporation's own shares
- 61. Holding own shares
- 62. Acquiring own shares
- 63. Other acquisition
- 64. Redemption of shares
- 65. Donated shares
- 66. Voting own shares
- 67. Reduction of stated capital
- 68. Stated capital account adjustment
- 69. Cancellation etc. of own shares
- 70. Presumption against acquisition

Section:

- 71. Change of shares
- 72. Redemption of debt obligations, etc.
- 73. Contract to purchase own shares
- 74. Commission for sale of shares
- 75. When dividends prohibited
- 76. Payment of dividends
- 77. Illicit loans
- 78. Permitted loans
- 79. Enforceability of illicit loan
- 80. Shareholder immunity
- 81. Lien on shares

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SECURITY CERTIFICATES, REGISTERS
AND TRANSFERS

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- 83. Part governs transfers
- 84. Security certificates
- 85. Contents of share certificate
- 86. Effect of restriction, etc.
- 87. Restriction on share transfer
- 88. Particulars of class
- 89. Fractional shares
- 90. Fractional share rights
- 91. Scrip certificate rights
- 92. Securities records
- 93. Securities registers
- 94. Place of registers
- 95. Effect of registration

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- 96. Branch register
- 97. Destruction of certificates
- 98. Dealings with registered holder
- 99. No duty to third person
- 100. Infants
- 101. Joint holders
- 102. Transmission of securities
- 103. Securities over-issued
- 104. Action on security
- 105. Securities fungible
- 106. Notice of defect
- 107. Purchase for value
- 108. Defences of issuer
- 109. Presumed notice of defect
- 110. Unauthorized signature
- 111. Completion by addition
- 112. Improperly altered security
- 113. Warranties of agents
- 114. Title of purchaser
- 115. Notice of adverse claim
- 116. Presumed notice of adverse claim
- 117. Warranties
- 118. Compelling endorsement
- 119. Endorsement of security
- 120. Endorsement without delivery
- 121. Endorsement in bearer form
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Section:

- 124. Constructive delivery
 - 125. Part of fungible bulk
 - 126. Notice of adverse claim
 - 127. Sale through broker
 - 128. Wrongful transfer
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 - 132. Endorsement effective
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 - 138. Duty of issuer in default
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- 171. Notice of directors & term of office
- 172. Cumulative voting

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- 230. Right to examine list of shareholders
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Be it enacted by the Lieutenant-Governor and House of
Assembly in Legislative Session convened, as follows:

Short Title

Short title

1. This Act may be cited as The Corporations Act.

Interpretation

Interpretation

2.(1) In this Act

- (a) "affairs" means the relationship among a corporation, its affiliates and the shareholders, directors and officers of bodies corporate, but does not include any business activities carried on by the bodies corporate;
- (b) "affiliate" means an affiliated body within the meaning of section 10;
- (c) "articles" means
 - (i) the original or restated articles of incorporation, articles of amendment, articles of amalgamation, articles of continuance, articles of reorganization, articles of dissolution and articles of revival, and
 - (ii) any statute, letters patent, memorandum of association, certificate of incorporation, or other constating instrument evidencing the corporate existence of a body corporate continued as a corporation under this Act;

- (d) "associate" when used to indicate a relationship with any person means
- (i) a body corporate of which that person beneficially owns or controls, directly or indirectly, shares or other securities convertible into shares, that carry more than ten per cent of the voting rights
 - (A) under all circumstances,
 - (B) by reason of occurrence of an event that has occurred and is continuing, or
 - (C) by reason of a currently exercisable option of right to purchase those shares or those convertible securities,
 - (ii) a partner of that person acting on behalf of the partnership of which they are partners,
 - (iii) a trust or estate in which that person has a substantial beneficial interest or in respect of which he or she serves as a trustee or in a similar capacity,
 - (iv) a spouse or child of that person, or

- (v) a relative of that person or of his or her spouse if that relative has the same residence as that person;
- (e) "auditor" includes a partnership of auditors;
- (f) "beneficial interest" or "beneficial ownership" includes ownership through a trustee, legal representative, agent or other intermediary;
- (g) "body corporate" includes an incorporated company or other body corporate however or wherever incorporated, other than a corporation sole;
- (h) "commencement" when used in relation to this Act or a provision thereof means the day that the Act or provision comes into force;
- (i) "constating instrument" includes any statute, letters patent, memorandum of association, articles of association, certificate of incorporation, certificate of continuance, by-laws, regulations or other instrument by which a body corporate is incorporated or continued or that governs or regulates the affairs of a body corporate;
- (j) "corporation" means a body corporate incorporated or continued under this Act;
- (k) "court" means the the Supreme Court or a judge thereof;

- (l) "debt obligation" means a bond, debenture, note or other evidence of indebtedness or guarantee of a corporation whether secured or unsecured;
- (m) "director" in relation to a body corporate, means a person occupying therein the position of director by whatever name that person is called and "directors" and "board of directors" includes a single director;
- (n) "distributing corporation" means a corporation any of the issued shares of which are part of a distribution to the public, remain outstanding and are held by more than one person;
- (o) "former Act" refers to Chapter 10 of the Statutes of Newfoundland 1899, as amended, consolidated and revised since July 19, 1899 and as contained, immediately before the commencement of this Act, in The Companies Act, being Chapter 54 of The Revised Statutes of Newfoundland, 1970, as amended;
- (p) "former-Act company" means a body corporate
 - (i) that was incorporated under Part I of the former Act,
 - (ii) registered as a company under Part V of the former Act, or
 - (iii) registered as a company pursuant to section 242

of The Companies Act,
1899, being Chapter 10
of the Statutes of
Newfoundland, 1899;

- (q) "incorporator" means a person who signs articles of incorporation;
- (r) "individual" means a natural person;
- (s) "liability" in respect of a corporation includes any debt of the corporation that arises under
 - (i) section 73,
 - (ii) subsection (2) of section 308, or
 - (iii) paragraph (f) or (g) of subsection (3) of section 366;
- (t) "Minister" means the member of the Executive Council from time to time charged with the administration of this Act;
- (u) "ordinary resolution" means a resolution passed by a majority of the votes cast by the shareholders who voted in respect of that resolution;
- (v) "person" includes an individual, body corporate, partnership, association and a trustee, executor, administrator or legal representative of a person;
- (w) "prescribed" means prescribed by the regulations;

- (x) "record" means any register, book or other record required to be kept by a corporation or other body corporate;
- (y) "redeemable share" means a share issued by a corporation
 - (i) that the corporation may purchase or redeem upon demand of the corporation, or
 - (ii) that the corporation is required by its articles to purchase or redeem at a specified time or upon demand of a shareholder;
- (z) "Registrar" means the Registrar of Companies established under this Act and includes any of the Registrar's deputies appointed in the manner provided by law;
- (aa) "resident Canadian" means an individual who is
 - (i) a Canadian citizen ordinarily resident in Canada,
 - (ii) a Canadian citizen not ordinarily resident in Canada who is a member of a prescribed class of persons, or
 - (iii) a permanent resident within the meaning of the Immigration Act, 1976 (Canada) and ordinarily resident in Canada, except a permanent resident who has been ordinarily resident in Canada for more than one

year after the time at which he or she first became eligible to apply for Canadian citizenship;

- (bb) "security" means a share of any class or series of shares of a corporation or a debt obligation of a corporation and includes a certificate evidencing any share or debt obligation;
- (cc) "security interest" means an interest in or charge upon the property of a corporation by way of mortgage, lien, pledge or otherwise and taken by a creditor to secure payment of an obligation of the corporation;
- (dd) "send" includes deliver;
- (ee) "series" in relation to share, means a division of a class of shares;
- (ff) "shareholder" includes a member of a corporation to which Part XX applies except where inconsistent with a provision of that Part;
- (gg) "special resolution" means a resolution
 - (i) passed by a majority of not less than two-thirds of the votes cast by the shareholders who voted in respect of that resolution, or
 - (ii) signed by all the shareholders entitled to vote on that resolution;

- (hh) "Superintendent of Insurance" means the Superintendent of Insurance appointed pursuant to section 11 of The Department of Consumer Affairs and Communications Act; and
- (ii) "unanimous shareholder agreement" means an agreement described in section 241.

(2) In order to assist in the expression of this Act in a more natural language without loss of precision or affecting the application of The Interpretation Act, certain rules to aid in the construction and application of the words "shall", "may" and "must" as used in this Act are set out in sections 3, 4 and 5.

Use of "shall" 3.(1) Where the auxiliary "shall" is used in a provision of this Act

- (a) to require that a person do or refrain from doing some act, matter or thing; or
- (b) to require that some act, matter or thing be done or not be done by some specific means, or manner, or in some specific form or at or within some specific time,

the provision is imperative and default in complying with it constitutes a contravention of this Act.

(2) Unless otherwise expressly provided, default in complying with an imperative provision referred to in subsection (1) does not invalidate any act, matter or thing done or not done in contravention of the provision nor prevent the later doing of that act, matter or thing in accordance with the provision.

(3) Compliance with a provision referred to in subsection (1) is enforceable in any court of competent jurisdiction notwithstanding that the contravention of the provision is punishable or has been punished pursuant to statute.

Use of "may"

4. The auxiliary "may" is permissive, empowering and enabling; and when used in the negative form, it negates any permission, power or capacity to do the act, matter or thing in respect of which the auxiliary is used so that, unless the contrary is expressly provided, the act, matter or thing is to be construed, so far as it can be done without allowing the statute to be made an instrument of fraud, as not being capable of being done in law or in fact.

(2) When the exercise of a power is subject to any qualification or condition, the power is not exercised unless the qualification or condition is met or complied with.

(3) Unless otherwise expressly provided, the doing of any act, matter or thing pursuant to a permission or power is within the sole and absolute discretion of the person to whom the permission or power is given.

Use of "must"

5.(1) Where the auxiliary "must" is used in a provision of this Act

- (a) to require that a person do or refrain from doing some act, matter or thing;
- (b) to require that an act, matter or thing be done or not be done by some specific means, or manner, or in some specific form, or at or within some specific time; or

- (c) to prescribe a qualification or condition for some purpose, office or status,

the provision imposes a duty or obligation upon the person required to comply with it.

(2) Default in complying with the duty or obligation referred to in subsection (1) does not constitute an offence under this Act unless the default is made an offence by a provision of this Act expressly mentioning the act, matter or thing or the duty or obligation or the provision imposing the duty or obligation.

(3) Compliance with any duty or obligation is enforceable in any court of competent jurisdiction.

(4) A person aggrieved by a breach of the duty or obligation referred to in subsection (1) may recover, by action in any court of competent jurisdiction, any damages suffered by that person as a direct result of the breach; but this subsection does not apply if the breach is an act or omission

- (a) in the performance of a function of a legislative nature or of a judicial nature; or
- (b) in the performance in good faith of a ministerial function by a Minister or employee of the Crown in the administration of this Act.

(5) When a provision of this Act that uses the auxiliary "must" to prescribe any qualification or condition for some purpose, office or status, the qualification or condition is mandatory and default in complying with it, unless it is otherwise provided,

- (a) frustrates the purpose;
- (b) vitiates the status;
- (c) nullifies the appointment to the office; or
- (d) vacates the tenure in the office,

to which the qualification or condition is attached, but without affecting the operation of subsections (2) to (4).

Purposes and Objects

Purposes of Act

- 6. The purposes of this Act are
 - (a) to revise and reform the law under which corporations are to be incorporated and governed within the province;
 - (b) to require companies heretofore incorporated or registered under the former Act to be continued under and pursuant to this Act;
 - (c) to provide for the registration of bodies corporate incorporated within the province by special Act;
 - (d) to provide for the registration of bodies corporate carrying on business or other activities within the province that are incorporated pursuant to the laws of another jurisdiction; and
 - (e) to encourage the promotion of uniformity in company law in Canada to the extent compatible with the public interest.

Application of Act

Application
of Act

7.(1) Subject to subsections (2) to (5), this Act, except where it is otherwise expressly provided, applies to every company incorporated by or under an Act of the Legislature before or after the commencement of this Act.

(2) When a provision of Part XX is inconsistent with or repugnant to any other provision of this Act, the provision of that Part in so far as it affects a body corporate to which this Act applies, supersedes and prevails over the other provisions of this Act.

(3) When it is expressly provided in this Act that a Part applies to a particular type or class of body corporate, that Part does not apply to a body corporate that is not of that type or class.

(4) This Act does not apply to a body corporate created for any government or municipal purpose.

(5) This Act does not apply to a body corporate incorporated or registered under The Agricultural Societies Act or The Co-operative Societies Act except to the extent that those Acts make this Act or any provision of this Act apply thereto.

Application of Other Acts

Certain
incorpor-
ations
halted

8. After the commencement of this Act, no company, association, society or partnership may be incorporated or registered under The Companies Act or The Industrial and Provident Societies Act.

Prohibited
associations

9. No company, association, society, or partnership consisting of more than twenty persons may be formed for

the purpose of carrying on any activity that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is incorporated under this Act or is formed under some other Act of the Legislature.

Construction generally

Affiliated corporations

10. For the purposes of this Act
- (a) one body corporate is affiliated with another body corporate if one of them is the subsidiary of the other or both are subsidiaries of the same body corporate or each of them is controlled by the same person; and
 - (b) if two bodies corporate are affiliated with the same body corporate at the same time, they are affiliated with each other.

Control of a body corporate

11. For the purposes of this Act, a body corporate is controlled by a person if any shares of the body corporate carrying voting rights sufficient to elect a majority of the directors of the body corporate are held, directly or indirectly (except by way of security only) by or on behalf of that person.

Holding & subsidiary bodies

12. For the purposes of this Act
- (a) a body corporate is the holding body corporate of another if that other body corporate is its subsidiary; and
 - (b) a body corporate is a subsidiary of another body corporate if it is controlled by that other body corporate.

Distribution to the public Act 13.(1) For the purposes of this

(a) a security of a body corporate is part of a distribution to the public, when in respect of the security

(i) there has been a filing of a prospectus, statement of material facts, registration statement, securities exchange take-over bid circular or similar document under the laws of this province or any other jurisdiction within or outside Canada, or

(ii) the security is listed for trading on any stock exchange wherever situated; and

(b) a security of a body corporate is deemed to be part of a distribution to the public where the security has been issued and a filing referred to in subparagraph (i) of paragraph (a) would be required if the security were being issued currently.

(2) For the purposes of this Act, the securities of a corporation that are issued upon a conversion of other securities or in exchange for other securities are securities that are part of a distribution to the public if any of those other were part of a distribution to the public.

PART I

INCORPORATION

Articles of Incorporation

Power to
incorporate

14.(1) Subject to subsection (2), one or more individuals or one or more bodies corporate may incorporate a corporation by signing and sending articles of incorporation to the Registrar.

(2) No individual may incorporate a corporation who

- (a) is less than nineteen years of age,
- (b) is of unsound mind and has been so found by a tribunal in Canada or elsewhere, or
- (c) has the status of a bankrupt.

Articles of
incorporation

15.(1) To be valid, articles of incorporation must follow the prescribed form and must set out, in respect of the proposed corporation,

- (a) the name of the corporation;
- (b) the place in the province and the address including street name and number, if any, where the registered office is to be situated;
- (c) the classes and any maximum number of shares that the corporation is authorized to issue and
 - (i) if there will be two or more classes of shares, the rights, privileges, restrictions and conditions attaching to each class of shares, and
 - (ii) if a class of shares may be issued in series, the

authority given to the directors to fix the number of shares in, and to determine the designation of, and the rights, privileges, restrictions and conditions attaching to, the shares of each series;

- (d) if the right to transfer shares of the corporation is to be restricted, a statement that the right to transfer shares is restricted and the nature of such restrictions;
- (e) the number of directors or, subject to paragraph (a) of section 172, the minimum and maximum number of directors of the corporation; and
- (f) any restriction on the business that the corporation may carry on.

(2) The articles may set out any provisions permitted by this Act or by-law to be set out in the by-laws of the corporation.

Special majorities

16.(1) Subject to subsection (2), if the articles or a unanimous shareholder agreement require a greater number of votes of directors or shareholders than that required by this Act to effect any action, the provisions of the articles or of the unanimous shareholder agreement prevail.

(2) The articles may not require a greater number of votes of shareholders to remove a director than the number specified in section 175.

Delivery of articles

17. An incorporator must send to the Registrar with the articles of in-

corporation the documents required by sections 37 and 171.

Certificate of Incorporation

Certificate of incorporation 18. Upon receipt of articles of incorporation, the Registrar must issue a certificate of incorporation in accordance with section 388.

Effect of certificate 19. A corporation comes into existence on the date shown in the certificate of incorporation.

Corporate Name

Name of corporation 20.(1) The word "Limited", "Limitee", "Incorporated", "Incorporee" or "Corporation" or the abbreviation "Ltd.", "Ltee", "Inc." or "Corp." must be part of the name of every corporation but a corporation may use and may be legally designated by either the full or the abbreviated form.

(2) The Registrar may exempt a body corporate continued as a corporation under this Act from the provisions of subsection (1).

English-French form of name 21. Subject to section 24, a corporation may set out its name in its articles in an English form, a French form, an English form and a French form or in a combined English and French form, and the corporation may use and may be legally designated by any such form.

Name in any language 22. Subject to section 24, a corporation may set out its name in its articles in any language form and it may use and may be legally designated by any such form.

Designating number 23. If requested to do so by the incorporators or a corporation, the Registrar must assign to the corporation

as its name a designating number determined by the Registrar.

Prohibited
names

24. A corporation must not be incorporated with or have a name

- (a) that is prohibited or refused under sections 401 to 404; or
- (b) that is reserved for another corporation or intended corporation under section 400.

Directing
change of
name

25. Where through inadvertence or otherwise a corporation

- (a) comes into existence or is continued with a name that contravenes this section, or
- (b) upon an application to change its name, is granted a name that contravenes this section,

the Registrar may direct the corporation to change its name in accordance with section 275.

Name of
continued
corporation

26.(1) Notwithstanding sections 24 and 25, a corporation that is continued under this Act is entitled to be continued with the name it had before that continuance.

(2) Where a corporation described in subsection (1) has a designating number as its name, the Registrar may direct the corporation to change its name to a name other than a designating number in accordance with section 275.

Revoking
name

27. Where a corporation has been directed under section 25 or 26 to change its name and has not within sixty days from the service of the directive to that effect changed its name to a

name that complies with this Act, the Registrar may revoke the name of the corporation and assign to it a name, and, until changed in accordance with section 275, the name of the corporation is thereafter the name so assigned.

Certificate
of amend-
ment of
name

28.(1) Where a corporation has had its name revoked and a name assigned to it under section 27, the Registrar must issue a certificate of amendment showing the new name of the corporation and must forthwith give notice of the change of name in the Gazette.

(2) The articles of incorporation are amended accordingly on the date shown in the certificate of amendment.

Pre-Incorporation Agreements

Pre-Incor-
poration
contracts

29. Except as provided in this section, a person who enters into a written contract in the name of or on behalf of a corporation before it comes into existence is personally bound by the contract and is entitled to the benefits thereof.

(2) A corporation may, within a reasonable time after it comes into existence, by any action or conduct signifying its intention to be bound thereby, adopt a written contract made before it came into existence in its name or on its behalf, and, upon such adoption,

- (a) the corporation is bound by the contract and is entitled to the benefits thereof as if the corporation had been in existence at the date of the contract and had been a party thereto; and
- (b) a person who purported to act in the name of or on behalf of

the corporation ceases, except as provided in subsection (3), to be bound by or entitled to the benefits of the contract.

(3) Except as provided in subsection (5), whether or not a written contract made before the coming into existence of a corporation is adopted by the corporation, a party to the contract may apply to a court for an order fixing obligations under the contract as joint or joint and several or apportioning liability between or among the corporation and a person who purported to act in the name of or on behalf of the corporation.

(4) Upon an application made under subsection (3) the court may make any order it thinks fit.

(5) If expressly so provided in the written contract, a person who purported to act in the name of or on behalf of the corporation before it came into existence is not in any event bound by the contract or entitled to the benefits thereof.

PART II

CAPACITY AND POWERS

Corporate
capacity

30.(1) A corporation has the capacity, and subject to this Act, the rights, powers and privileges of a natural person.

(2) A corporation has the capacity to carry on its business, conduct its affairs and exercise its powers in any other jurisdiction to the extent that the laws of that jurisdiction permit.

(3) It is not necessary for a by-law to be passed in order to confer

any particular power on a corporation or its directors.

Restricted
business

31. A corporation shall not carry on any business or exercise any power that it is restricted by its articles from carrying on or exercising, nor shall a corporation exercise any of its powers in a manner contrary to its articles.

Effect of
restricted
acts

32. For greater certainty it is declared that no act of a corporation, including any transfer of property to or by a corporation, is invalid by reason only that the act or transfer is contrary to its articles or this Act.

No con-
structive
notice

33. No person is affected by or deemed to have notice or knowledge of the contents of a document concerning a corporation by reason only that the document has been filed with the Registrar or is available for inspection at an office of the corporation.

Assertions
of corpor-
ate incap-
acity

34. A corporation, or a guarantor of an obligation of a corporation, may not assert against a person dealing with the corporation or with any person who has acquired rights from the corporation

- (a) that the articles, by-laws and any unanimous shareholder agreement have not been complied with;
- (b) that the persons named in the most recent notice sent to the Registrar under section 171 or 179 are not the directors of the corporation;
- (c) that the place named in the most recent notice sent to the Registrar under section 37 is

not the registered office of the corporation;

- (d) that a person held out by a corporation as a director, an officer or an agent of the corporation has not been duly appointed or has no authority to exercise the powers and perform the duties that are customary in the business of the corporation or usual for such director, officer or agent;
- (e) that a document issued by any director, officer or agent of a corporation with actual or usual authority to issue the document is not valid or not genuine; or
- (f) that the financial assistance referred to in section 77 or the sale, lease or exchange of property referred to in section 299 was not authorized,

except where that person has, or ought to have by virtue of his or her position with or relationship to the corporation, knowledge to the contrary.

Corporate
seal

35. An instrument or agreement executed on behalf of a corporation by a director, an officer or an agent of the corporation is not invalid merely because a corporate seal is not affixed thereto.

PART III

REGISTERED OFFICE AND RECORDS

Registered Office

Registered
office

36.(1) A corporation must at all times have a registered office in the

province in the place specified in its articles.

(2) The directors of a corporation may change the address of the registered office within the place in the province specified in the articles.

Notice of
registered
office

37.(1) A notice of registered office in prescribed form shall be sent to the Registrar together with any articles that designate or change the place in the province in which the registered office of the corporation is to be situated.

(2) A corporation shall send to the Registrar, within fifteen days of any change of address of its registered office, a notice in prescribed form, which the Registrar must file.

(3) Where the location of a registered office of a corporation is changed by reason only of the annexation or amalgamation of the place in which the registered office is situated to or with another municipality that change does not constitute a change within the meaning of subsection (1).

Records

Corporate
records

38.(1) A corporation shall prepare and maintain, at its registered office or at any other place in the province designated by the directors, records containing

- (a) the articles and the by-laws, and all amendments thereto, and a copy of any unanimous shareholder agreement;
- (b) minutes of meetings and resolutions of shareholders;

(c) copies of all notices required by section 171 or 179; and

(d) a securities register complying with section 92.

Director's records

39.(1) In addition to the records described in section 38, a corporation shall prepare and maintain adequate accounting records and records containing minutes of meetings and resolutions of the directors and any committee thereof.

(2) The records described in subsection (1) shall be kept at the registered office of the corporation or at such other place in the province as the directors think fit and shall at all reasonable times be open to inspection by the directors.

Accounting records out of province

40. Where accounting records of a corporation are kept at a place outside the province, there shall be kept at the registered office or other office in the province accounting records adequate to enable the directors to ascertain the financial position of the corporation with reasonable accuracy on a quarterly basis.

Records of continued corporations

41. For the purposes of paragraph (b) of section 38 and section 39, when a body corporate is continued under this Act, "records" include similar registers and other records required by law to be maintained by the body corporate before it was so continued.

Form of records

42. All records required by this Act to be prepared and maintained may be in a bound or loose-leaf form or in a photographic film form, or may be entered or recorded by any system of mechanical or electronic data processing or any other information storage device that is capable of reproducing any requ-

ired information in intelligible written form within a reasonable time.

Duty of care:
records

43. A corporation and its agents shall take reasonable precautions

- (a) to prevent loss or destruction of,
- (b) to prevent falsification of entries in, and
- (c) to facilitate detection and correction of inaccuracies in,

the records required by this Act to be prepared and maintained.

Access to corporate records

44.(1) Shareholders and creditors of a corporation, their agents and legal representatives and the Registrar may examine the records referred to in section 38 during the usual business hours of the corporation, and may take extracts therefrom, free of charge, and, where the corporation is a distributing corporation, any other person may do so upon payment of a reasonable fee.

(2) A shareholder of a corporation is entitled upon request and without charge to one copy of the articles and by-laws and of any unanimous shareholder agreement.

Shareholder Lists

Basic shareholder list

45.(1) Shareholders and creditors of a corporation, their agents and legal representatives, the Registrar and, if the corporation is a distributing corporation, any other person upon payment of a reasonable fee and upon sending to a corporation or its transfer agent the affidavit referred to in subsection (4), may upon application require the corporation or its agent to furnish within ten

days from the receipt of the affidavit a list (in this section referred to as the "basic list") made up to a date not more than ten days before the date of receipt of the affidavit setting out the names of the shareholders of the corporation, the number of shares owned by each shareholder and the address of each shareholder as shown on the record of the corporation.

(2) A person requiring a corporation to supply a basic list may, if the person states in the affidavit referred to in subsection (4) that the person requires supplemental lists, require the corporation or its agent upon payment of a reasonable fee to furnish supplemental lists setting out any changes from the basic list in the names or addresses of the shareholders and the number of shares owned by each shareholder for each business day following the date the basic list is made up to.

(3) The corporation or its agent must furnish a supplemental list required under subsection (2)

(a) on the date the basic list is furnished, if the information relates to changes that took place before that date; and

(b) on the business day following the day to which the supplemental list relates, if the information relates to changes that take place on or after the date the basic list is furnished.

(4) The affidavit required under subsection (1) must state

(a) the name and address of the applicant;

(b) the name and address for service of the body corporate if the applicant is a body corporate; and

(c) that the basic list and any supplemental lists obtained pursuant to subsection (2) will not be used except as permitted under section 47.

(5) If the applicant is a body corporate, the affidavit referred to in subsection (4) must be made by a director or officer of the body corporate.

Share options
list

46. A person requiring under section 45 that a corporation supply a basic list or a supplemental list may also require the corporation to include in any such list the name and address of any known holder of an option or right to acquire shares of the corporation.

Use of share-
holder
list

47. A list of shareholders obtained under section 45 shall not be used by any person except in connection with

(a) an effort to influence the voting of shareholders of the corporation;

(b) an offer to acquire shares of the corporation; or

(c) any other matter relating to the affairs of the corporation.

PART IV

CORPORATE FINANCE

Shares

48.(1) Shares of a corporation are to be in registered form and without nominal or par value.

(2) When a body corporate is continued under this Act, a share with nominal or par value issued by the body corporate before it was so continued is, for the purpose of subsection (1), deemed to be a share without nominal or par value.

One class
of shares

49. When a corporation has only one class of shares, the rights of the holders are equal in all aspects and include

- (a) the right to vote at any meeting of shareholders;
- (b) the right to receive any dividend declared by the corporation; and
- (c) the right to receive the remaining property of the corporation on dissolution.

Classes of
shares

50. The articles may provide for more than one class of shares and if they so provide

- (a) the rights, privileges, restrictions and conditions attaching to the shares of each class must be set out in the shares of that class; and
- (b) the rights set out in section 49 must be attached to at least one class of share but all those rights need not be attached to more than the one class of shares.

How shares
issued

51. Subject to the articles, the by-laws, any unanimous shareholder agreement and section 57, shares may be issued at such times and to such persons and for such consideration as the directors may determine.

Consideration for shares

52.(1) A share shall not be issued until it is fully paid in money or in property or past services that is the fair equivalent of the money that the corporation would have received if the share had been issued for money.

(2) In determining whether property or past service is the fair equivalent of a money consideration, the directors may take into account reasonable charges and expenses of organization and reorganization and payments for property and past services reasonably expected to benefit the corporation.

(3) For the purposes of this section, "property" does not include a promissory note from or a promise to pay by the person acquiring a share.

Shares non-assessable

53. Shares issued by a corporation are non-assessable and the holders are not liable to the corporation or to its creditors in respect thereof.

Stated capital accounts

54.(1) A corporation must maintain a separate stated capital account for each class and series of shares that it issues.

(2) A corporation must add to the appropriate stated capital account the full amount of any consideration that it receives for any shares that it issues.

(3) Notwithstanding subsection (1) of section 52 and subsection (2) where a corporation issues shares

(a) in exchange for

(i) property of a person who immediately before the exchange does not deal with the corporation at arm's length within the

meaning of that term in the Income Tax Act (Canada), or

(ii) shares of a body corporate that immediately before the exchange or that, because of the exchange, does not deal with the corporation at arm's length within the meaning of that term in the Income Tax Act (Canada); or

(b) pursuant to an agreement referred to in subsection (1) of section 285 or an arrangement referred to in paragraph (b) or (c) of subsection (1) of section 311 to shareholders of an amalgamating body corporate who receive the shares in addition to or instead of securities of the amalgamated body corporate,

the corporation may, subject to subsection (4), add to the stated capital accounts maintained for the shares of the classes or series issued the whole or any part of the amount of the consideration it received in the exchange.

(4) On the issue of a share a corporation must not add to a stated capital account in respect of the share it issues an amount greater than the amount of the consideration it received for the share.

(5) Where a corporation proposes to add any amount to a stated capital account it maintains in respect of a class or series of shares, if

(a) the amount to be added was not received by the corporation as

consideration for the issue of shares; and

- (b) the corporation has issued any outstanding shares of more than one class or series,

the addition to the stated capital account must be approved by special resolution unless all the issued and outstanding shares are shares of not more than two classes of convertible shares referred to in subsection (5) of section 68.

(6) When a body corporate is continued under this Act, it may add to a stated capital account any consideration received by it for a share it issued and a corporation at any time may, subject to subsection (5), add to a stated capital account any amount it credited to a retained earnings or other surplus account.

(7) When a body corporate is continued under this Act, subsection (2) does not apply to the consideration received by it before it was so continued unless the share in respect of which the consideration is received is issued after the corporation is so continued.

(8) When a body corporate is continued under this Act, any amount unpaid in respect of a share issued by the body corporate before it was so continued and paid after it was so continued shall be added to the stated capital account maintained for the shares of that class or series.

(9) For the purposes of subsection (2) of section 62, sections 67 and 75, paragraph (b) of subsection (2) of section 77 and paragraph (a) of subsection (2) of section 289, when a body corpor-

ate is continued under this Act its stated capital is deemed to include the amount that would have been included in stated capital if the body corporate had been incorporated under this Act.

(10) A corporation shall not reduce its stated capital or any stated capital account except in the manner provided in this Act.

Open-end
mutual
funds

55.(1) Section 54 and any other provisions of this Act relating to stated capital do not apply to an open-end mutual fund.

(2) For the purposes of this section, "open-end mutual fund" means a corporation that makes a distribution to the public of its shares and that carries on only the business of investing the consideration it receives for the shares it issues, and all or substantially all of those shares are redeemable upon the demand of a shareholder.

Shares in
series

56.(1) The articles may authorize the issue of any class of shares in one or more series and may authorize the directors to fix the number of shares in and to determine the designation, rights, privileges, restrictions and conditions attaching to the shares of each series, subject to the limitations set out in the articles.

(2) If any cumulative dividends or amounts payable on return of capital in respect of a series of shares are not paid in full, the shares of all series of the same class participate rateably in respect of accumulated dividends and return of capital.

(3) No rights, privileges, restrictions or conditions attached to a series of shares authorized under this section confer upon a series a priority

in respect of dividends or return of capital over any other series of shares of the same class that are then outstanding.

(4) Before the issue of shares of a series authorized under this section, the directors must send to the Registrar articles of amendment in prescribed form to designate a series of shares.

(5) Upon receipt of articles of amendment designating a series of shares, the Registrar must issue a certificate of amendment in accordance with section 388.

(6) The articles of the corporation are amended accordingly on the date shown in the certificate of amendment.

Pre-emptive
rights

57.(1) If the articles so provide, no shares of a class must be issued unless the shares have first been offered to the shareholders holding the shares of that class, and those shareholders have a pre-emptive right to acquire the offered shares in proportion to their holdings of the shares of that class, at such price and on such terms as those shares are to be offered to others.

(2) Notwithstanding that the articles provide the pre-emptive right referred to in subsection (1), shareholders have no pre-emptive right in respect of shares to be issued

- (a) for a consideration other than money;
- (b) as a share dividend; or
- (c) pursuant to the exercise of conversion privileges, options or rights previously granted by the corporation.

Instruments
evidenc-
ing rights

58.(1) A corporation may issue certificates, warrants or other evidences of conversion privileges, options or rights to acquire securities of the corporation, but must set out the conditions thereof

- (a) in the certificates, warrants or other evidences; or
- (b) in certificates evidencing the securities to which the conversion privileges, options or rights are attached.

(2) Conversion privileges, options and rights to acquire securities of a corporation may be made transferrable or non-transferrable, and options and rights to acquire may be made separable or inseparable from any securities to which they are attached.

When shares
issued

59. Where a corporation has granted privileges to convert any securities issued by the corporation into shares, or into shares of another class or series, or has issued or granted options or rights to acquire shares, if the articles limit the number of authorized shares, the corporation shall reserve and continue to reserve sufficient authorized shares to meet the exercise of such conversion privileges, options and rights.

Corporation's
own shares

60.(1) Subject to subsection (2) and except as provided in sections 61 to 64, a corporation

- (a) shall not hold shares in itself or in its holding body corporate; and
- (b) shall not permit any of its subsidiary bodies corporate to acquire shares of the corporation.

(2) A corporation must cause a subsidiary body corporate of the corporation that holds shares of the corporation to sell or otherwise dispose of those shares within five years from the date, as the case requires,

- (a) that the body corporate became a subsidiary of the corporation, or
- (b) that the corporation was continued under this Act.

Holding own
shares

61.(1) A corporation may in the capacity of a legal representative hold shares in itself or in its holding body corporate unless it or the holding body corporate or a subsidiary of either of them has a beneficial interest in the shares.

(2) A corporation may hold shares in itself or in its holding body corporate by way of security for the purposes of a transaction entered into by it in the ordinary course of a business that includes the lending of money.

Acquiring
own
shares

62.(1) Subject to subsection (2) and to its articles, a corporation may purchase or otherwise acquire shares issued by it.

(2) A corporation shall not make any payment to purchase or otherwise acquire shares issued by it if there are reasonable grounds for believing that

- (a) the corporation is, or would after the payment be, unable to pay its liabilities as they become due; or
- (b) the realizable value of the corporation's assets would after the payment be less than

the aggregate of its liabilities and stated capital of all classes.

Other
acquisition

63.(1) Notwithstanding subsection (2) of section 62, but subject to subsection (3) of this section and to its articles, a corporation may purchase or otherwise acquire shares issued by it

- (a) to settle or compromise a debt or claim asserted by or against the corporation;
- (b) to eliminate fractional shares; or
- (c) to fulfil the terms of a non-assignable agreement under which the corporation has an option or is obliged to purchase shares owned by a director, an officer or an employee of the corporation.

(2) Notwithstanding subsection (2) of section 62, a corporation may purchase or otherwise acquire shares issued by it

- (a) to satisfy the claim of a shareholder who dissents under section 300; or
- (b) to comply with an order under section 366.

(3) A corporation shall not make any payment to purchase or acquire under subsection (1) shares issued by it if there are reasonable grounds for believing that

- (a) the corporation is, or would after the payment be, unable to pay its liabilities as they become due; or

- (b) the realizable value of the corporation's assets would after the payment be less than the aggregate of its liabilities and the amount required for payment on a redemption or in a liquidation of all shares the holders of which have the right to be paid prior to the holders of the shares to be purchased or acquired.

Redemption
of shares

64.(1) Notwithstanding subsection (2) of section 60, or subsection (3) of section 63, but subject to subsection (2) of this section and to its articles, a corporation may, at prices not exceeding the redemption price thereof stated in the articles or calculated according to a formula stated in the articles, purchase or redeem any redeemable shares issued by it.

(2) A corporation shall not make any payment to purchase or redeem any redeemable shares issued by it if there are reasonable grounds for believing that

- (a) the corporation is, or would after the payment be, unable to pay its liabilities as they become due; or
- (b) the realizable value of the corporation's assets would after the payment be less than the aggregate of
 - (i) its liabilities, and
 - (ii) the amount that would be required to pay the holders of shares that have a right to be paid, on a redemption or in a liquidation, rateably with or prior to the holders of

the shares to be purchased or redeemed.

Donated
shares

65. Subject to section 69, a corporation may accept from any shareholder a share of the corporation surrendered to it as a gift, but may not extinguish or reduce a liability in respect of an amount unpaid on any such share except in accordance with section 67.

Voting own
shares

66. A corporation holding shares in itself or in its holding body corporate shall not vote or permit those shares to be voted unless the corporation

- (a) holds the shares in the capacity of a legal representative; and
- (b) has complied with section 251.

Reduction
of stated
capital

67.(1) Subject to subsection (3), a corporation may by special resolution reduce its stated capital by

- (a) extinguishing or reducing a liability in respect of an amount unpaid on any share,
- (b) returning any amount in respect of consideration the corporation received for an issued share, whether or not the corporation purchases, redeems or otherwise acquires any share or fraction thereof it issued, and
- (c) declaring its stated capital to be reduced by an amount that is not represented by realizable assets.

(2) A special resolution under this section must specify the stated capital account or accounts from which the reduction of stated capital effected by the special resolution will be deducted.

(3) A corporation shall not reduce its stated capital under paragraph (a) or (b) of subsection (1) if there are reasonable grounds for believing that

- (a) the corporation is, or would after the reduction be, unable to pay its liabilities as they become due; or
- (b) the realizable value of the corporation's assets would thereby be less than the aggregate of its liabilities.

(4) A creditor of a corporation is entitled to apply to a court for an order compelling a shareholder or other recipient

- (a) to pay to the corporation an amount equal to any liability of the shareholder that was extinguished or reduced contrary to this section; or
- (b) to pay or deliver to the corporation any money or property that was paid or distributed to the shareholder or other recipient as a consequence of a reduction of capital made contrary to this section.

(5) An action to enforce a liability imposed by this section may not be commenced after two years from the date of the act complained of.

(6) This section does not affect any liability that arises under section 188 or 189.

Stated
capital
account
adjustment

68.(1) Upon a purchase, redemption or other acquisition by a corporation under section 62, 63, 64, 81 or 300 or paragraph (f) of subsection (3) of section 366, of shares or fractions thereof issued by it, the corporation must deduct from the stated capital account maintained for the class or series of shares purchased, redeemed or otherwise acquired an amount equal to the result obtained by multiplying the stated capital of the shares of that class or series by the number of shares of that class or series or fractions thereof purchased, redeemed or otherwise acquired, divided by the number of issued shares of that class or series immediately before the purchase, redemption or other acquisition.

(2) A corporation must deduct the amount of a payment made by the corporation to a shareholder under paragraph (g) of subsection (3) of section 366 from the stated capital account maintained for the class or series of shares in respect of which the payment was made.

(3) A corporation must adjust its stated capital account or accounts in accordance with any special resolution referred to in subsection (2) of section 67.

(4) Upon a conversion of issued shares of a class into shares of another class or upon a change under section 275, 310 or 366 of issued shares of a corporation into shares of another class or series, a corporation must

(a) deduct from the stated capital account maintained for the

class or series of shares changed or converted an amount equal to the result obtained by multiplying the stated capital of the shares of that class or series by the number of shares of the class or series changed or converted, divided by the number of issued shares of that class or series immediately before the change or conversion; and

- (b) add the result obtained under paragraph (a) and any additional consideration received by the corporation pursuant to the change or conversion to the stated capital account maintained or to be maintained for the class or series of shares into which the shares have been changed or converted.

(5) For the purposes of subsection (4), when a corporation issues two classes of shares and there is attached to each of the classes a right to convert a share of the one class into a share of the other class, then, if a share of one class is converted into a share of the other class, the amount of stated capital attributable to a share in either class is the aggregate of the stated capital of both classes divided by the number of issued shares of both classes immediately before the conversion.

Cancellation
etc. of own
shares

69. Shares or fractions thereof issued by a corporation and purchased, redeemed or otherwise acquired by it must be cancelled or, if the articles limit the number of authorized shares, must be restored to the status of authorized but unissued shares.

Presumption
against
acquisition

70. For the purposes of sections 68 and 69, a corporation holding shares in itself as permitted by section 61 is to be presumed not to have purchased, redeemed or otherwise acquired those shares.

Change of
shares

71.(1) Shares issued by a corporation and converted or changed under section 275, 310 or 366 into shares of another class or series become issued shares of the class or series of shares into which the shares have been converted or changed.

(2) Where the articles limit the number of authorized shares of a class or series of shares of a corporation and issued shares of that class or series have become, pursuant to subsection (1), issued shares of another class or series, the number of unissued shares of the first mentioned class or series must, unless the articles of amendment or reorganization otherwise provide, be increased by the number of shares that, pursuant to subsection (1), became shares of another class or series.

Redemption
of debt
obligations,
etc.

72.(1) Debt obligations issued, pledged or deposited by a corporation are not redeemed by reason only that the indebtedness evidenced by the debt obligations or in respect of which the debt obligations are issued, pledged or deposited is repaid.

(2) Debt obligations issued by a corporation and purchased, redeemed or otherwise acquired by it may be cancelled or, subject to any applicable trust indenture or other agreement, may be re-issued, pledged or deposited to secure any obligation of the corporation then existing or thereafter incurred, and any such acquisition and re-issue, pledge or deposit is not a cancellation of the debt obligations.

Contract to
purchase
own shares

73.(1) A contract with a corporation providing for the purchase of shares of the corporation is specifically enforceable against the corporation except to the extent that the corporation cannot perform the contract without thereby being in breach of section 62 or 63.

(2) In any action brought on a contract referred to in subsection (1), the corporation has the burden of proving that performance thereof is prevented by section 55 or 56.

(3) Until the corporation has fully performed a contract referred to in subsection (1), the other party retains the status of a claimant entitled to be paid as soon as the corporation is lawfully able to do so, in a liquidation, to be ranked subordinate to the rights of creditors but in priority to the shareholders.

Commission
for sale
of shares

74. The directors acting honestly and in good faith with a view to the best interests of the corporation may authorize the corporation to pay a commission to any person in consideration of the person's purchasing or agreeing to purchase shares of the corporation from the corporation or from any other person, or procuring or agreeing to procure purchasers for any such shares.

When divi-
dends pro-
hibited

75. A corporation shall not declare or pay a dividend if there are reasonable grounds for believing that

- (a) the corporation is, or would after the payment be, unable to pay its liabilities as they become due; or
- (b) the realizable value of the corporation's assets would thereby be less than the aggr-

egate of its liabilities and stated capital of all classes.

Payment of
of
dividends

76.(1) A corporation may pay a dividend by issuing fully paid shares of the corporation and, subject to section 75, a corporation may pay a dividend in money or property.

(2) If shares of a corporation are issued in payment of a dividend, the value of the dividend stated as an amount in money must be added to the stated capital account maintained or to be maintained for the shares of the class or series issued in payment of the dividend.

Illicit
loans

77.(1) Except as permitted under section 78, when circumstances prejudicial to the corporation exist, a corporation or any corporation with which it is affiliated may not, directly or indirectly, give financial assistance by means of a loan, guarantee or otherwise

- (a) to a shareholder, director, officer or employee of such corporation or affiliated corporation or to an associate of any such person for any purpose; or
- (b) to any person for the purpose of or in connection with a purchase of a share issued or to be issued by the corporation or a corporation with which it is affiliated.

(2) Circumstances prejudicial to the corporation exist in respect of financial assistance mentioned in subsection (1) where there are reasonable grounds for believing that

- (a) the corporation is, or would after giving the financial assistance be, unable to pay its liabilities as they become due; or
- (b) the realizable value of the corporation's assets, excluding the amount of any financial assistance in the form of a loan and in the form of assets pledged or encumbered to secure a guarantee, would after giving the financial assistance be less than the aggregate of the corporation's liabilities and stated capital of all classes.

Permitted
loans

78. Notwithstanding section 77, a corporation may give financial assistance to any person by means of a loan, guarantee or otherwise

- (a) in the ordinary course of business, if the lending of money is part of the ordinary business of the corporation;
- (b) on account of expenditures incurred or to be incurred on behalf of the corporation;
- (c) to a holding body corporate if the corporation is a wholly-owned subsidiary of the holding body corporate;
- (d) to a subsidiary body corporate of the corporation; and
- (e) to employees of the corporation or any of its affiliates
 - (i) to enable or assist them to purchase or erect living accommodation for their own occupation, or

- (ii) in accordance with a plan for the purchase of shares of the corporation or any of its affiliates to be held by a trustee.

Enforce-
ability of
illicit
loan

79. A contract made by a corporation contrary to section 77 may be enforced by the corporation or by a lender for value in good faith without notice of the contravention.

Shareholder
immunity

80. The shareholders of a corporation are not, as shareholders, liable for any liability, act or default of the corporation except under subsection (4) of section 67, subsection (3) of section 241 or subsection (5) of section 351.

Lien on
shares

81.(1) Subject to section 86, the articles may provide that the corporation has a lien on a share registered in the name of a shareholder or the shareholder's legal representative for a debt of that shareholder to the corporation, including an amount unpaid in respect of a share issued by a body corporate on the date it was continued under this Act.

(2) A corporation may enforce a lien referred to in subsection (1) in accordance with its by-laws.

PART V

SECURITY CERTIFICATES, REGISTERS AND TRANSFERS

Interpretation

Definitions
for Part

82.(1) In this Part

- (a) "adverse claim" includes a claim that a transfer was or would be wrongful or that a particular adverse person is

- the owner of or has an interest in the security;
- (b) "bearer" means the person in possession of a security payable to bearer or endorsed in blank;
 - (c) "bona fide purchaser" means a purchaser for value in good faith and without notice of any adverse claim who takes delivery of a security in bearer form or of a security in registered form issued to the purchaser or endorsed to the purchaser in blank;
 - (d) "broker" means a person who is engaged for all or part of his or her time in the business of buying and selling securities and who, in the transaction concerned, acts for or buys a security from, or sells a security to a customer;
 - (e) "delivery" means voluntary transfer of possession;
 - (f) "fiduciary" means a trustee, guardian, committee, curator, tutor, executor, administrator or representative of a deceased person, or any other person acting in a fiduciary capacity;
 - (g) "fungible" in relation to securities means securities of which any unit is, by nature, or usage of trade, the equivalent of any other like unit;
 - (h) "genuine" means free of forgery or counterfeiting;

- (i) "good faith" means honesty in fact in the conduct of the transaction concerned;
- (j) "holder" means a person in possession of a security issued or endorsed to that person or to bearer or in blank;
- (k) "issuer" includes a corporation
 - (i) that is required by this Act to maintain a securities register; or
 - (ii) that directly or indirectly creates fractional interests in its rights or property and that issues securities as evidence of such fractional interests;
- (l) "over-issue" means the issue of securities in excess of any maximum number of securities that the issuer is authorized by its articles or a trust indenture to issue;
- (m) "purchaser" means a person who takes by sale, mortgage, pledge, issue, re-issue, gift or any other voluntary transaction creating an interest in a security;
- (n) "security" or "security certificate" means an instrument issued by a corporation that is
 - (i) in bearer, registered or order form,
 - (ii) of a type commonly dealt in upon securities excha-

nges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment,

- (iii) one of a class or series or by its terms divisible into a class or series of instruments, and
- (iv) evidence of a share, participation or other interest in or obligation of a corporation;
- (o) "transfer" includes transmission by operation of law;
- (p) "trust indenture" means a trust indenture as defined in section 141;
- (q) "unauthorized" in relation to a signature or an endorsement means one made without actual, implied or apparent authority and includes a forgery;
- (r) "valid" means issued in accordance with the applicable law and the articles of the issuer, or validated under section 103.

(2) Except where its transfer is restricted and noted on a security in accordance with section 86, a security is a negotiable instrument.

(3) A security is in registered form if

- (a) it specified a person entitled to the security or to the rights it evidences, and its transfer is capable of being

recorded in a securities register; or

(b) it bears a statement that it is in registered form.

(4) A debt obligation is in order form where, by its terms, it is payable to the order or assigns of any person therein specified with reasonable certainty or to that person or that person's order.

(5) A security is in bearer form if it is payable to bearer according to its terms and not by reason of any endorsement.

(6) A guarantor for an issuer is deemed to be an issuer to the extent of his or her guarantee whether or not his or her obligation is noted on the security.

Application

Part governs transfers

83. The transfer or transmission of a security is governed by this Part.

Security Certificates

Security certificates

84.(1) Every security holder is entitled at the security holder's option to a security certificate that complies with this Act or a non-transferable written acknowledgement of the security holder's right to obtain such a security certificate from a corporation in respect of the securities of that corporation held by the security holder.

(2) A corporation may charge a fee of not more than three dollars for a security certificate issued in respect of a transfer.

(3) A corporation is not required to issue more than one security certificate in respect of securities held jointly by several persons, and delivery of a certificate to one of several joint holders is sufficient delivery to all.

(4) A security certificate must be signed manually by at least one director or officer of the corporation or by or on behalf of a registrar, transfer agent or branch transfer agent of the corporation, or by a trustee who certifies it in accordance with a trust indenture, and any additional signatures required on a security certificate may be printed or otherwise mechanically reproduced thereon.

(5) Notwithstanding subsection (4), a manual signature is not required on

(a) a security certificate representing

(i) a promissory note that is not issued under a trust indenture,

(ii) a fractional share, or

(iii) an option or a right to acquire a security; or

(b) a scrip certificate.

(6) If a security certificate contains a printed or mechanically reproduced signature of a person, the corporation may issue the security certificate, notwithstanding that the person has ceased to be a director or an officer of the corporation, and the security certificate is as valid as if the person were a director or an officer at the date of its issue.

Contents
of share
certificate

85. There must be stated upon
the face of each share certificate
issued by a corporation

- (a) the name of the corporation;
- (b) the words "Incorporated under
the laws of Newfoundland" or
words of like effect;
- (c) the name of the person to whom
it was issued; and
- (d) the number and class of shares
and the designation of any
series that the certificate
represents.

Effect of
restriction,
etc.

86.(1) If a security certificate
issued by a corporation or by a body
corporate before the body corporate was
continued under this Act is or becomes
subject to

- (a) a restriction on its transfer
other than a constraint under
section 276;
- (b) a lien in favour of the corp-
oration;
- (c) a unanimous shareholder agree-
ment; or
- (d) an endorsement under subsec-
tion (4) of section 301,

the restriction, lien, agreement or
endorsement is ineffective against a
transferee of the security who has no
actual knowledge of it, unless it or a
reference to it is noted conspicuously
on the security certificate.

(2) If a body corporate continued
under this Act has outstanding security
certificates on which "private company"
appear, those words are deemed to be a

notice of a restriction, lien, agreement or endorsement for the purpose of subsection (1).

Restriction
on share
transfer

87. A corporation may not restrict the transfer of its shares otherwise than by way of a constraint under section 276 when any of the issued shares of the corporation are or were part of a distribution to the public, remain outstanding and are held by more than one person.

Particulars
of class

88.(1) There must be stated legibly on a share certificate issued by a corporation that is authorized to issue shares of more than one class or series

- (a) the rights, privileges, restrictions and conditions attached to the shares of each class and series; or
- (b) that the class or series of shares that it represents has rights, privileges, restrictions or conditions attached thereto and that the corporation will furnish to a shareholder, on demand and without charge, a full copy of the text of
 - (i) the rights, privileges, restrictions and conditions attached to each class authorized to be issued and to each series in so far as the same have been fixed by the directors; and
 - (ii) the authority of the directors to fix the rights, privileges, restrictions and conditions of subsequent series.

(2) If a share certificate issued by a corporation contains the statement mentioned in paragraph (b) of subsection (1), the corporation shall furnish to a shareholder on demand and without charge a full copy of the text of

- (a) the rights, privileges, restrictions and conditions attached to each class authorized to be issued and to each series in so far as the same have been fixed by the directors; and
- (b) the authority of the directors to fix the rights, privileges, restrictions and conditions of subsequent series.

Fractional
shares

89.(1) A corporation may issue a certificate for a fractional share or may issue in place thereof scrip certificates in bearer form that entitle the holder to receive a certificate for a full share by exchanging scrip certificates aggregating a full share.

(2) The directors may attach conditions to any scrip certificates issued by a

- (a) that the scrip certificates become void if not exchanged for a share representing a full share before a specified date; and
- (b) that any shares for which the scrip certificates are exchangeable may, notwithstanding any pre-emptive right, be issued by the corporation to any person and the proceeds thereof distributed rateably to the holders of the scrip certificates.

Fractional
share
rights

90. A holder of a fractional share issued by a corporation is not entitled to exercise voting rights or to receive a dividend in respect of the fractional shares, unless

- (a) the fractional share results from a consolidation of shares; or
- (b) the articles of the corporation otherwise provide.

Scrip
certificate
rights

91. A holder of a scrip certificate is not entitled to exercise voting rights or to receive a dividend in respect of the scrip certificate.

Securities Registers

Securities
records

92. A corporation must maintain a securities register to record the securities issued by it in registered form, showing with respect to each class or series of securities

- (a) the names, alphabetically arranged, and the latest known address of each person who is or has been a security holder;
- (b) the number of securities held by each security holder; and
- (c) the date and particulars of the issue and transfer of each security.

Securities
registers

93. A corporation may appoint an agent to maintain a central securities register and branch securities registers.

Place of
registers

94. A central securities register must be maintained by a corporation at its registered office or at any office in the province of a trust company des-

ignated by the directors and licensed under The Trust and Loan Companies (Licensing) Act, 1974, and any branch securities registers may be kept at any place in or out of the province and designated by the directors.

Effect of
registration

95. Registration of the issue or transfer of a security in the central securities register or in a branch securities register is complete and valid registration for all purposes.

Branch
register

96.(1) A branch securities register must only contain particulars of securities issued or transferred at that branch.

(2) Particulars of each issue or transfer of a security registered in a branch securities register must also be kept in the corresponding central securities register.

Destruction

97. A corporation, its agent or a trustee defined in section 141, is not required to produce

- (a) a cancelled security certificate, in registered form, an instrument referred to in subsection (1) of section 58 that is cancelled or a like cancelled instrument in registered form, six years after the date of its cancellation;
- (b) a cancelled security certificate, in bearer form, an instrument referred to in subsection (1) of section 58 that is cancelled or a like cancelled instrument in bearer form, after the date of its cancellation; or
- (c) an instrument referred to in subsection (1) of section 58

or a like instrument, irrespective of its form, after the date of its expiry.

Dealings with
registered
holder

98.(1) A corporation or a trustee defined in Part VI may, subject to sections 214, 215, 217 and 219, treat the registered owner of the security as the person exclusively entitled to vote, to receive notices, to receive any interest, dividend or other payments in respect of the security, and otherwise to exercise all the rights and powers of an owner of the security.

(2) Notwithstanding subsection (1), a corporation whose articles restrict the right to transfer its securities must, and any other corporation may, treat a person as a registered security holder entitled to exercise all the rights of the security holder that person represents, if that person furnishes evidence as described in subsection (4) of section 132 to the corporation that

- (a) the person is the executor, administrator, heir or legal representative of the heirs, of the estate of a deceased security holder;
- (b) the person is a guardian, committee, trustee, curator or tutor representing a registered security holder who is an infant, an incompetent person or a missing person; or
- (c) the person is a liquidator of, or a trustee in bankruptcy for, a registered security holder.

(3) If a person upon whom the ownership of a security devolves by

operation of law, other than a person described in subsection (2), furnishes proof of his or her authority to exercise rights or privileges in respect of a security of the corporation that is not registered in his or her name, the corporation must treat that person as entitled to exercise those rights or privileges.

No duty
to third
person

99. A corporation is not required to inquire into the existence of, or see to the performance or observance of any duty owed to a third person by a registered holder of any of its securities or by anyone whom it treats, as permitted or required by section 98, as the owner or registered holder thereof.

Infants

100. If an infant exercises any rights of ownership in the securities of a corporation, no subsequent repudiation or avoidance is effective against the corporation.

Joint
holders

101. A corporation may treat as owner of a security the survivors of persons to whom the security was issued as joint holders, if it receives proof satisfactory to it of the death of any such joint holder.

Transmiss-
ion of
securities

102.(1) Subject to any applicable law relating to the collection of taxes, a person referred to in paragraph (a) of subsection (2) of section 98 is entitled to become a registered holder, if that person deposits with the corporation or its transfer agent

(a) the original grant of probate or of letters of administration, or a copy thereof certified to be a true copy by

(i) the court that granted the probate or letters of administration,

- (ii) a trust company incorporated under the laws of Canada or a province, or
 - (iii) a lawyer or notary acting on behalf of the person referred to in paragraph (a) of subsection (2) of section 98; or in the case of transmission by notarial will in Quebec a copy thereof authenticated pursuant to the laws of that province; and
- (b) the following documents, namely:
- (i) an affidavit or declaration of transmission made by a person referred to in paragraph (a) of subsection (2) of section 98 stating the particulars of the transmission, and
 - (ii) the security certificate that was owned by the deceased holder
 - (A) in case of a transfer to a person referred to in paragraph (a) of subsection (2) of section 98, with or without the endorsement of that person, and
 - (B) in case of a transfer to any other person, endorsed in accordance with section 119

accompanied by any assurance the corporation may require under section 132.

(2) Notwithstanding subsection (1), if the laws of the jurisdiction governing the transmission of a security of a deceased holder do not require a grant of probate or of letters of administration in respect of the transmission, a legal representative of the deceased holder is entitled, subject to any applicable law relating to the collection of taxes, to become a registered holder or to designate a registered holder, if the legal representative deposits with the corporation or its transfer agent

- (a) the security certificate that was owned by the deceased holder; and
- (b) reasonable proof of the governing laws, of the deceased holder's interest in the security and of the right of the legal representative or the person the legal representative designated to become the registered holder.

(3) Deposit of the documents required by subsection (1) or (2) empowers a corporation or its agent to record in a securities register the transmission of a security from the deceased holder to a person referred to in paragraph (a) of subsection (2) of section 98 or to such person as the person referred to in that paragraph may designate and, thereafter, to treat the person who thus becomes a registered holder as the owner of those securities.

Securit-
ies over-
issued

103.(1) The provisions of this Part that validate a security or compel its issue or re-issue do not apply to

the extent that validation, issue or re-issue would result in over-issue, but

- (a) if a valid security, similar in all respects to the security involved in the over-issue, is reasonably available for purchase, the person entitled to the validation or issue may compel the issuer to purchase and deliver such a security to the person entitled to the validation or issue against surrender of the security that the issuer holds; or
- (b) if a valid security, similar in all respects to the security involved in the over-issue, is not reasonably available for purchase, the person entitled to the validation or issue may recover from the issuer an amount equal to the price the last purchaser for value paid for the invalid security.

(2) When an issuer subsequently amends its articles or a trust indenture to which it is a party to increase its authorized securities to a number equal to or in excess of the number of securities over-issued, the securities so over-issued are valid from the date of their issue.

(3) A purchase or payment by an issuer under subsection (1) is not a purchase or payment to which section 62, 63 or 64 or sections 68 to 72 apply.

Action on
security

104. In an action on security,

- (a) unless specifically denied in the pleadings, each signature

on the security or in a necessary endorsement is admitted;

- (b) a signature on the security is presumed to be genuine and authorized but, if the effectiveness of the signature is put to issue, the burden of establishing that it is genuine and authorized is on the party claiming under the signature;
- (c) if the signature is admitted or established, production of the instrument entitles a holder to recover on it unless the defendant establishes a defence or a defect going to the validity of the security; and
- (d) if the defendant establishes that a defence or defect exists, the plaintiff has the burden of establishing that the defence or defect is ineffective against the defendant or some person under who the defendant claims.

Securities
fungible

105. Unless otherwise agreed, and subject to any applicable law, regulation or stock exchange rule, a person required to deliver securities may deliver any security of the specified issue in bearer form or registered in the name of the transferee or endorsed to the transferee or in blank.

Notice of
defect

106. Even against a purchaser for value and without notice of a defect going to the validity of a security, the terms of the security include those stated on the security and those incorporated therein by reference to another instrument, statute, rule, regulation or order to the extent that the terms so

incorporated do not conflict with the stated terms; but an inclusion of terms by reference is not of itself notice to a purchaser for value of a defect going to the validity of the security, notwithstanding that the security expressly states that a person accepting it admits that notice.

Purchase
for value

107. A security is valid in the hands of a purchaser for value without notice of any defect going to its validity.

Defences of
issuer

108.(1) Except as provided in section 110, the fact that a security is not genuine is a complete defence even against a purchaser for value and without notice.

(2) All other defences of an issuer, including non-delivery and conditional delivery of a security, are ineffective against a purchaser for value without notice of the particular defence.

Presumed
notice of
defect

109. After an event that creates a right to immediate performance of the principal obligation evidenced by a security, or that sets a date on or after which a security is to be presented or surrendered for redemption or exchange, a purchaser is presumed to have notice of any defect in its issue or of any defence of the issuer

- (a) if the event requires the payment of money or the delivery of securities, or both, on presentation or surrender of the security, and any such funds or securities are available on the date set for payment or exchange, and the purchaser takes the security more than one year after that date; or

- (b) if the purchaser takes the security more than two years after the date set for surrender or presentation or the date on which such performance became due.

Unauthorized
signature

110. An unauthorized signature on a security before or in the course of issue is ineffective, except that the signature is effective in favour of a purchaser for value and without notice of the lack of authority, if the signing has been done by

- (a) an authenticating trustee, registrar, transfer agent or other person entrusted by the issuer with the signing of the security, or of similar securities, or their immediate preparation for signing; or
- (b) an employee of the issuer or of a person referred to in paragraph (a) who in the ordinary course of his or her duties handles the security.

Completion
by addition

111. Where a security contains the signatures necessary to its issue or transfer but is incomplete in any other respect

- (a) any person may complete it by filling in the blanks in accordance with his or her authority; and
- (b) notwithstanding that the blanks are incorrectly filled in, the security as completed is enforceable by a purchaser who took it for value and without notice of such incorrectness.

Improperly
altered

112. A completed security that has been improperly altered, even if

security fraudulently altered, remains enforceable but only according to its original terms.

Warranties of agents

113.(1) A person signing a security as authenticating trustee, registrar, transfer agent or other person entrusted by the issuer with the signing of the security, warrants to a purchaser for value without notice

- (a) that the security is genuine;
- (b) that the person's acts in connection with the issue of the security are within his or her authority; and
- (c) that the person has reasonable grounds for believing that the security is in the form and within the amount the issuer is authorized to issue.

(2) Unless otherwise agreed, a person referred to in subsection (1) does not assume any further liability for the validity of a security.

Title of purchaser

114.(1) Upon delivery of a security the purchaser requires the rights in the security that his or her transferer had or had authority to convey; but a purchaser who has been a party to any fraud or illegality affecting the security or who as a prior holder had notice of an adverse claim does not improve his or her position by taking from a later bona fide purchaser.

(2) A bona fide purchaser, in addition to acquiring the rights of a purchaser, also acquires the security free from any adverse claim.

(3) A purchaser of a limited interest acquires rights only to the extent of the interest purchased.

Notice of
adverse
claim

115.(1) A purchaser of a security, or any broker for a seller or purchaser, is presumed to have notice of an adverse claim if

- (a) the security, whether in bearer or registered form, has been endorsed "for collection", or "for surrender" or for some other purpose not involving transfer; or
- (b) the security is in bearer form and has on it a statement that it is the property of a person other than the transferor, but the mere writing of a name on a security is not such a statement.

(2) Notwithstanding that a purchaser, or any broker for a seller or purchaser, has notice that a security is held for a third person or is registered in the name of or endorsed by a fiduciary, the person has no duty to inquire into the rightfulness of the transfer and has no notice of an adverse claim; but when a purchaser knows that the consideration is to be used for, or that the transaction is for, the personal benefit of the fiduciary or is otherwise in breach of the fiduciary's duty, the purchaser has notice of an adverse claim.

Presumed
notice of
adverse
claim

116. An event that creates a right to immediate performance of the principal obligation evidenced by a security or that sets a date on or after which the security is to be presented or surrendered for redemption or exchange is not of itself notice of an adverse claim, except in the case of a purchase

- (a) after one year from the date set for such presentation or surrender for redemption; or

- (b) after six months from any date set for payment of money against presentation or surrender of the security if funds are available for payment on that date.

Warranties

117.(1) A person who presents a security for registration or transfer or for payment or exchange warrants to the issuer that the person is entitled to the registration, payment or exchange; but a purchaser for value without notice of an adverse claim who receives a new, re-issued or re-registered security on registration of transfer warrants only that the purchaser has no knowledge of any unauthorized signature in a necessary endorsement.

(2) A person, by transferring a security to a purchaser for value, warrants only

- (a) that the transfer is effective and rightful;
- (b) that the security is genuine and has not been materially altered; and
- (c) that the person knows nothing that might impair the validity of the security.

(3) Where a security is delivered by an intermediary known by the purchaser to be entrusted with delivery of the security on behalf of another or with collection of a draft or other claim to be collected against the delivery, the intermediary by the delivery warrants only his or her own good faith and authority even if the intermediary has purchased or made advances against the draft or other claim to be collected against the delivery.

(4) A pledgee or other holder for purposes of security who re-delivers a security received, or after payment and on order of the debtor delivers that security to a third person, gives only the warranties of an intermediary under subsection (3).

(5) A broker gives to his or her customer, to the issuer and to a purchaser, as the case may be, the warranties provided in this section and has the rights and privileges of a purchaser under this section; and those warranties of and in favour of the broker acting as an agent are in addition to warranties given by the broker's customer and warranties given in favour of the broker's customer.

Compelling
endorse-
ment

118. When a security in registered form is delivered to a purchaser without a necessary endorsement, the purchaser may become a bona fide purchaser only as of the time the endorsement is supplied; but against the transferor the transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary endorsement supplied.

Endorsement
of security

119.(1) In this section, "appropriate person" means

- (a) the person specified by the security or by special endorsement to be entitled to the security;
- (b) if a person described in paragraph (a) is described as a fiduciary but is no longer serving in the described capacity, either that person or his or her successor;
- (c) if the security or endorsement mentioned in paragraph (a)

specified more than one person as fiduciaries and one or more are no longer serving in the described capacity, the remaining fiduciary or fiduciaries, whether or not a successor has been appointed or qualified;

- (d) if a person described in paragraph (a) is an individual and is without capacity to act by reason of death, incompetence, infancy, minority or otherwise, his or her fiduciary;
- (e) if the security or endorsement mentioned in paragraph (a) specifies more than one person with right of survivorship and by reason of death all cannot sign, the survivor or survivors;
- (f) a person having power to sign under applicable law or a power of attorney; or
- (g) to the extent that a person described in paragraphs (a) to (f) may act through an agent, that person's authorized agent.

(2) Whether the person signing is an appropriate person is determined as of the time of signing and an endorsement by that person does not become unauthorized for the purposes of this Part by reason of any subsequent change of circumstances.

(3) An endorsement of a security in registered form is made when an appropriate person signs, either on the security or on a separate document, an assignment or transfer of the security or a power to assign or transfer it, or

when the signature of an appropriate person is written without more upon the back of the security.

(4) An endorsement may be special or in blank.

(5) An endorsement in blank includes an endorsement to the bearer.

(6) A special endorsement specifies the person to whom the security is to be transferred, or who has power to transfer it.

(7) A holder may convert an endorsement in blank into a special endorsement.

(8) Unless otherwise agreed, the endorser by his or her endorsement assumes no obligation that the security will be honoured by the issuer.

(9) An endorsement purporting to be only of part of a security representing units intended by the issuer to be separately transferable is effective to the extent of the endorsement.

(10) Failure of a fiduciary to comply with a controlling instrument or with the law of the jurisdiction governing the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of a transfer, does not render his or her endorsement unauthorized for the purposes of this Part.

Endorsement
without
delivery

120. An endorsement of a security whether special or in blank does not constitute a transfer until delivery of the security on which it appears or, if the endorsement is on a separate document, until delivery of both the security and that document.

Endorsement
in bearer
form

121. An endorsement of a security in bearer form may give notice of an adverse claim under section 115 but does not otherwise affect any right to registration that the holder has.

Unauthorized
endorsement

122.(1) The owner of a security may assert the ineffectiveness of an endorsement against the issuer or any purchaser, other than a purchaser for value and without notice of an adverse claim who has in good faith received a new, re-issued or re-registered security on registration of transfer, unless the owner

(a) has ratified an authorized endorsement of the security;
or

(b) is otherwise precluded from impugning the effectiveness of an unauthorized endorsement.

(2) An issuer who registers the transfer of a security upon an unauthorized endorsement is liable for improper registration.

Warranties
of guarantor
of signature

123.(1) A person who guarantees a signature of an endorser of a security warrants that at the time of signing

(a) the signature was genuine;

(b) the signer was an appropriate person as defined in section 119 to endorse; and

(c) the signer had legal capacity to sign.

(2) A person who guarantees a signature of an endorser does not otherwise warrant the rightfulness of the particular transfer.

(3) A person who guarantees an endorsement of a security warrants both the signature and the rightfulness of the transfer in all respects, but an issuer may not require a guarantee of endorsement as a condition to registration of transfer.

(4) The warranties referred to in this section are made to any person taking or dealing with the security relying on the guarantee; and the guarantor is liable to that person for any loss resulting from breach of warranty.

Constructive
delivery

124.(1) Delivery to a purchaser occurs when

- (a) the purchaser or a person designated by the purchaser acquires possession of a security;
- (b) the purchaser's broker acquires possession of a security specially endorsed to or issued in the name of the purchaser;
- (c) the purchaser's broker sends the purchaser confirmation of the purchase and the broker in his or her records identifies a specific security as belonging to the purchaser; or
- (d) with respect to an identified security to be delivered while still in the possession of a third person, that person acknowledges that he or she holds it for the purchaser.

(2) A purchaser is the owner of a security held for the purchaser by the purchaser's broker, but a purchaser is not a holder except in the cases refer-

ed to in paragraphs (b) and (c) of subsection (1).

Part of
fungible
bulk

125. If a security is part of a fungible bulk, a purchaser of the security is the owner of a proportionate interest in the fungible bulk.

Notice
of adverse
claim

126. Notice of an adverse claim received by a broker or by a purchaser in respect of a security after the broker takes delivery as a holder for value is not effective against the broker or the purchaser, except that, as between the broker and the purchaser, the purchaser may demand delivery of an equivalent security as to which no notice of an adverse claim has been received.

Sale
through
broker

127.(1) Unless otherwise agreed, if a sale of a security is made on an exchange or otherwise through brokers,

- (a) the selling customer fulfils his or her duty to deliver when the selling customer delivers the security to the selling broker or to a person designated by the selling broker or causes an acknowledgement to be made to the selling broker that it is held for the selling broker; and
- (b) the selling broker, including a correspondent broker, acting for a selling customer fulfils his or her duty to deliver by delivering the security or a like security to the buying broker or to a person designated by the buying broker or by affecting clearance of the sale in accordance with the rules of the exchange on which the transaction took place.

(2) Except as otherwise provided in this section and unless otherwise agreed, a transferor's duty to deliver a security under contract of purchase is not fulfilled until the transferor delivers the security in negotiable form to the purchaser or to a person designated by the purchaser, or causes an acknowledgement to be made to the purchaser that the security is held for the transferor.

(3) A sale to a broker purchasing for the broker's own account is subject to subsection (2) and not subsection (1), unless the sale is made on a stock exchange.

Wrongful
transfer

128.(1) A person against whom the transfer of a security is wrongful for any reason, including his or her incapacity, may, against anyone except a bona fide purchaser,

(a) reclaim possession of the security or obtain possession of a new security that evidences all or part of the same rights; or

(b) claim damages.

(2) If the transfer of a security is wrongful by reason of an unauthorized endorsement, the owner may reclaim possession of the security or a new security even from a bona fide purchaser if the ineffectiveness of the purported endorsement may be asserted under section 122 against the purchaser.

(3) The right to reclaim possession of a security may be specifically enforced, its transfer may be restrained and the security may be impounded pending litigation.

Right to
requisites
for reg-
istration

129.(1) Unless otherwise agreed, a transferor must on demand supply a purchaser with proof of the transferor's authority to transfer or with any other requisite that is necessary to obtain registration of the transfer of a security; but, if the transfer is not for value, a transferor need not prove such authority or provide such requisites unless the purchaser pays the reasonable and necessary costs of the proof and transfer.

(2) If the transferor fails to comply with a demand under subsection (1) within a reasonable time, the purchaser may reject or rescind the transfer.

Seizure of
security

130. No seizure of a security or other interest evidenced thereby is effective until the person making the seizure obtains possession of the security.

Duty to
register
transfer

131.(1) Where a security in registered form is presented for transfer, the issuer must register the transfer if

- (a) the security is endorsed by an appropriate person, as defined in section 119;
- (b) reasonable assurance is given that the endorsement is genuine and effective;
- (c) the issuer has no duty to inquire into adverse claims or has discharged that duty;
- (d) any applicable law relating to the collection of taxes has been complied with;
- (e) the transfer is rightful or is to a bona fide purchaser; and

- (f) any fee referred to in subsection (2) of section 84 has been paid.

(2) Where an issuer has a duty to register a transfer of a security, the issuer is liable to the person presenting it for registration for loss resulting from any unreasonable delay in registration or from failure or refusal to register the transfer.

Endorsement
effective

132.(1) An issuer may require an assurance that each necessary endorsement on a security is genuine and effective by requiring a guarantee of the signature of the person endorsing, and by requiring

- (a) if the endorsement is by an agent, reasonable assurance of authority to sign;
- (b) if the endorsement is by a fiduciary, evidence of appointment or incumbency;
- (c) if there is more than one fiduciary, reasonable assurance that all who are required to sign have done so; and
- (d) in any other case, assurance that corresponds as closely as practicable to the foregoing.

(2) For the purposes of subsection (1), a "guarantee of the signature" means a guarantee signed by or on behalf of a person reasonably believed by the issuer to be responsible.

(3) An issuer may adopt reasonable standards to determine responsible persons for the purpose of subsection (2).

(4) "Evidence of appointment or incumbency" in paragraph (b) of subsection (1) means

- (a) in the case of a fiduciary appointed by a court, a copy of the order certified in accordance with section 102, and dated not earlier than sixty days before the date a security is presented for transfer; or
- (b) in any other case, a copy of a document showing the appointment or other evidence believed by the issuer to be appropriate.

(5) An issuer may adopt reasonable standards with respect to evidence for the purposes of paragraph (b) of subsection (4).

(6) An issuer does not have notice of the contents of any document obtained pursuant to subsection (4) except to the extent that the contents relate directly to appointment or incumbency.

(7) If an issuer demands assurance additional to that specified in this section for a purpose other than that specified in subsection (4) and obtains a copy of a will, trust or partnership agreement, by-law or similar document, the issuer has notice of all matters contained therein affecting the transfer.

Limited
duty of
inquirer by
issuer

133. An issuer to whom a security is presented for registration must inquire into adverse claims if

- (a) written notice of an adverse claim is received at a time and in a manner that affords the issuer a reasonable oppor-

tunity to act on it before the issue of a new, re-issued or re-registered security and the notice discloses the name and address of the claimant, the registered owner and the issue of which the security is a part; or

- (b) the issuer is deemed to have notice of an adverse claim from a document that it obtained under subsection (7) of section 132.

Discharge
of duty by
issuer

134. An issuer may discharge a duty of inquiry by any reasonable means, including the notifying of an adverse claimant by registered mail sent to the address furnished by the issuer or, if no such address has been furnished, to his or her residence or regular place of business, that a security has been presented for registration of transfer by a named person, and that the transfer will be registered unless within thirty days from the date of mailing the notice either

- (a) the issuer is served with a restraining order or other order of a court; or
- (b) the issuer is provided with an indemnity bond sufficient in the issuer's judgment to protect the issuer and any registrar, transfer agent or other agent of the issuer from any loss that might be incurred by any of them as a result of complying with the adverse claim.

Inquiry
into
adverse
claims

135. Unless an issuer is deemed to have notice of an adverse claim from a document that it obtained under subsection (7) of section 132 or has

received notice of an adverse claim under section 133, if a security presented for registration is endorsed by the appropriate person as defined in section 119, the issuer has no duty to inquire into adverse claims; and in particular

- (a) an issuer registering a security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent or correct description of the fiduciary relationship and thereafter the issuer may assume without inquiry that the newly registered owner continues to be the fiduciary until the issuer receives written notice that the fiduciary is no longer acting as such with respect to the particular security;
- (b) an issuer registering a transfer on an endorsement by a fiduciary has no duty to inquire whether the transfer is made in compliance with the document or with the law of the jurisdiction governing the fiduciary relationship; and
- (c) an issuer does not have notice of the contents of any court record or any registered document even if the record or document is in the issuer's possession and even if the transfer is made on the endorsement of a fiduciary to the fiduciary himself or herself or to the fiduciary's nominee.

Notice of
adverse

136. A written notice of adverse claim received by an issuer is effective

claim for twelve months from the date when it was received unless the notice is renewed in writing.

Limitation of issuer's liability 137. Except as otherwise provided in any applicable law relating to the collection of taxes, the issuer is not liable to the owner or any other person who incurs a loss as a result of the registration of a transfer of a security if

- (a) the necessary endorsements were on or with the security; and
- (b) the issuer had no duty to inquire into adverse claims or had discharged any such duty.

Duty of issuer in default 138. If an issuer has registered a transfer of a security to a person who is not entitled to it, the issuer must on demand deliver a like security to the owner unless

- (a) section 137 applies;
- (b) the owner is precluded by subsection (1) of section 139 from asserting any claim; or
- (c) the delivery would result in over-issue, in which case the issuer's liability is governed by section 103.

Lost or stolen security 139.(1) Where a security has been lost, apparently destroyed or wrongfully taken, and the owner fails to notify the issuer of the fact by giving the issuer written notice of the owner's adverse claim within a reasonable time after the owner knows of the loss, destruction or taking and if the issuer has registered a transfer of the security before receiving such notice, the owner is preclud-

ed from asserting against the issuer any claim to a new security.

(2) Where the owner of a security claims that the security has been lost, destroyed or wrongfully taken, the issuer must issue a new security in place of the original security if the owner

- (a) so requests before the issuer has notice that the security has been acquired by a bona fide purchaser;
- (b) furnishes the issuer with a sufficient indemnity bond; and
- (c) satisfies any other reasonable requirements imposed by the issuer.

(3) If, after the issue of a new security under subsection (2), a bona fide purchaser of the original security presents the original security for registration of transfer, the issuer must register the transfer unless registration would result in an over-issue, in which case the issuer's liability is governed by section 103.

(4) In addition to any rights on an indemnity bond, the issuer may recover a new security issued under subsection (2) from the person to whom it was issued or any person taking under the issuer other than a bona fide purchaser.

Agent's
duties

140.(1) An authenticating trustee, registrar, transfer agent or other agent of an issuer has, in respect of the issue, registration of transfer and cancellation of a security of the issuer,

- (a) a duty to the issuer to exercise good faith and reasonable diligence; and
- (b) the same obligation to the holder or owner of a security, and the same rights, privileges and immunities, as the issuer.

(2) Notice to an authenticating trustee, registrar, transfer agent or other agent of an issuer is notice to the issuer with respect to the functions performed by the agent.

(3) An agent or bailee who, in good faith (including observance of reasonable commercial standards if the agent or bailee is in the business of buying, selling or otherwise dealing with securities of a corporation) has received securities and sold, pledged or delivered them according to the instructions of his or her principal is not liable for conversion or for participation in breach of fiduciary duty although the principal has no right to dispose of them.

PART VI

TRUST INDENTURES

Interpretation

Definitions for Part

141. In this Part

- (a) "event of default" means an event specified in a trust indenture on the occurrence of which
 - (i) a security interest constituted by the trust indenture becomes enforceable, or

(ii) the principal, interest and other moneys payable thereunder become or may be declared to be payable before maturity,

but the event is not an event of default until all conditions prescribed in the trust indenture in connection with that event for the giving of notice or the lapse of time or otherwise have been satisfied;

(b) "trustee" means any person appointed as trustee under the terms of a trust indenture to which a corporation is a party and includes any successor trustee; and

(c) "trust indenture" means any deed, indenture or other instrument, including any supplement or amendment thereto, made by a corporation after its incorporation or continuance under this Act, under which the corporation issues debt obligations and in which a person is appointed as trustee for the holders of the debt obligations issued thereunder.

Application
of Part

142.(1) This Part applies to a trust indenture if the debt obligations issued or to be issued under the trust indenture are part of a distribution to the public.

(2) The Registrar may exempt a trust indenture from this Part if the trust indenture, the debt obligations issued thereunder and the security interest effected thereby are subject to a law of a province or a country other

than Canada that is substantially equivalent to this Part.

Conflict of
interest

143.(1) No person may be appointed as trustee if there is a material conflict of interest between the person's role as trustee and the person's role in any other capacity.

(2) A trustee must, within ninety days after the trustee becomes aware that a material conflict of interest exists,

(a) eliminate the conflict of interest; or

(b) resign from office.

(3) A trust indenture, any debt obligations issued thereunder and a security interest effected thereby are valid notwithstanding a material conflict of interest of the trustee.

(4) If a trustee contravenes subsection (1) or (2), any interested person may apply to a court for an order that the trustee be replaced, and the court may make an order on such terms as it thinks fit.

Qualification of
trustee

144. A trustee, or at least one of the trustees if more than one is appointed, must be a trust company licensed under The Trust and Loan Companies (Licensing) Act, 1974.

List of
security
holders

145.(1) A holder of debt obligations issued under a trust indenture may, upon payment to the trustee of a reasonable fee, require the trustee to furnish, within fifteen days after delivering to the trustee the statutory declaration referred to in subsection (4), a list setting out

- (a) the names and addresses of the registered holders of the outstanding debt obligations;
- (b) the principal amount of outstanding debt obligations owned by each such holder; and
- (c) the aggregate principal amount of debt obligations outstanding,

as shown on the records maintained by the trustee on the day that the statutory declaration is delivered to that trustee.

(2) Upon the demand of a trustee, the issuer of debt obligations must furnish the trustee with the information required to enable the trustee to comply with subsection (1).

(3) If the person requiring the trustee to furnish a list under subsection (1) is a body corporate, the statutory declaration required under that subsection must be made by a director or officer of the body corporate.

(4) The statutory declaration required under subsection (1) must state

- (a) the name and address of the person requiring the trustee to furnish the list and, if the person is a body corporate, the address for service thereof; and
- (b) that the list not be used except as permitted under subsection (5).

(5) A list obtained under this section shall not be used by any person except in connection with

- (a) an effort to influence the voting of the holders of debt obligations;
- (b) an offer to acquire debt obligations; or
- (c) any other matter relating to the debt obligations or the affairs of the issuer or guarantor thereof.

Evidence of
compliance

146.(1) An issuer or a guarantor of debt obligations issued or to be issued under a trust indenture must, before doing any act that is described in paragraph (a), (b) or (c) of this subsection, furnish the trustee with evidence of compliance with the conditions in the trust indenture relating to

- (a) the issue, certification and delivery of debt obligations under the trust indenture;
- (b) the release or release and substitution of property subject to a security interest constituted by the trust indenture; or
- (c) the satisfaction and discharge of the trust indenture.

(2) Upon the demand of a trustee, the issuer or guarantor of debt obligations issued or to be issued under a trust indenture must furnish the trustee with evidence of compliance with the trust indenture by the issuer or guarantor in respect of any act to be done by the trustee at the request of the issuer or guarantor.

Contents of declaration 147. Evidence of compliance as required by section 146 must consist of

- (a) a statutory declaration or certificate made by a director or an officer of the issuer or guarantor stating that the conditions referred to in that section have been complied with;
- (b) if the trust indenture requires compliance with conditions that are subject to review by legal counsel, an opinion of legal counsel that those conditions have been complied with; and
- (c) if the trust indenture requires compliance with conditions that are subject to review by an auditor or accountant, an opinion or report of the auditor of the issuer or guarantor, or such other accountant as the trustee may select, that those conditions have been complied with.

Further evidence of compliance 148. The evidence of compliance referred to in section 147 must include a statement by the person giving the evidence

- (a) declaring that he or she has read and understands the conditions of the trust indenture described in section 146;
- (b) describing the nature and scope of the examination or investigation upon which he or she based the certificate, statement or opinion; and
- (c) declaring that he or she has made such examination or in-

vestigation as he or she believes necessary to enable him or her to make the statements or give the opinions contained or expressed therein.

Evidence of compliance upon demand of trustee

149. Upon the demand of a trustee, the issuer or guarantor of debt obligations issued under a trust indenture must furnish the trustee with evidence in such form as the trustee may require as to compliance with any condition thereto relating to any action required or permitted to be taken by the issuer or guarantor under the trust indenture.

Certificate of compliance

150. At least once in each twelve-month period beginning on the date of the trust indenture and at any other time upon the demand of a trustee, the issuer or guarantor of debt obligations issued under a trust indenture must furnish the trustee with a certificate that the issuer or guarantor has complied with all requirements contained in the trust indenture that, if not complied with, would, with the giving of notice, lapse of time or otherwise, constitute an event of default, or, if there has been failure to so comply, giving particulars thereof.

Notice of default

151. The trustee must give to the holders of debt obligations issued under a trust indenture, within thirty days after the trustee becomes aware of the occurrence thereof, notice of every event of default arising under the trust indenture and continuing at the time the notice is given, unless the trustee reasonably believes that it is in the best interests of the holders of the debt obligations to withhold the notice and so informs the issuer and guarantor in writing.

Duty of
care of
trustee

152. A trustee in exercising his or her powers and discharging his or her duties must

- (a) act honestly and in good faith with a view to the best interests of the holders of the debt obligations issued under the trust indenture; and
- (b) exercise the care, diligence and skill of a reasonably prudent trustee.

Reliance on
statement

153. Notwithstanding section 152, a trustee is not liable if the trustee relies in good faith upon statements contained in a statutory declaration, certificate, opinion or report that complies with this Act or the trust indenture.

No
exculpation

154. No term of a trust indenture or of any agreement between a trustee and the holders of debt obligations issued thereunder or between the trustee and the issuer or guarantor operates to relieve a trustee from the duties imposed upon the trustee by section 152.

PART VII

RECEIVERS AND RECEIVER-MANAGERS

Functions
of receiver

155. A receiver of any property of a corporation may, subject to the rights of secured creditors,

- (a) receive the income from the property,
- (b) pay the liabilities connected with the property, and
- (c) realize the security interest of those on behalf of whom the receiver is appointed,

but, except to the extent permitted by a court, the receiver shall not carry on the business of the corporation.

Function of
receiver-
manager

156. A receiver of a corporation may, if the receiver is also appointed receiver-manager of the corporation, carry on any business of the corporation to protect the security interest of those on behalf of whom the receiver is appointed.

Directors'
powers
cease

157. If a receiver-manager is appointed by a court or under an instrument, the powers of the directors of the corporation that the receiver-manager is authorized to exercise may not be exercised by the directors until the receiver-manager is discharged.

Duty under
court
order

158. A receiver or receiver-manager appointed by a court must act in accordance with the directions of the court.

Duty under
instrument

159. A receiver or receiver-manager appointed under an instrument must act in accordance with that instrument and any direction of a court made under section 161.

Duty of care

160. A receiver or receiver-manager of a corporation appointed under an instrument must

- (a) act honestly and in good faith; and
- (b) deal with any property of the corporation in his or her possession or control in a commercially reasonable manner.

Directions
by court

161. Upon an application by a receiver or receiver-manager, whether appointed by a court or under an instrument, or upon an application by any

interested person, a court may make any order it thinks fit including, without limiting the generality of the foregoing,

- (a) an order appointing, replacing or discharging a receiver or receiver-manager and approving his or her accounts;
- (b) an order determining the notice to be given to any person, or dispensing with notice to any person;
- (c) an order fixing the remuneration of the receiver or receiver-manager;
- (d) an order requiring the receiver or receiver-manager, or a person by or on behalf of whom the receiver or receiver-manager is appointed, to make good any default in connection with the receiver's or receiver-manager's custody or management of the property and business of the corporation, or to relieve any such person from any default on such terms as the court thinks fit, and to confirm any act of the receiver or receiver-manager; and
- (e) an order giving directions on any matter relating to the duties of the receiver or receiver-manager.

Duties of
receiver
& receiver-
manager

162. A receiver or receiver-manager must
- (a) immediately notify the Registrar of his or her appointment and discharge;

- (b) take into his or her custody and control the property of the corporation in accordance with the court order or instrument under which the receiver or receiver-manager is appointed;
- (c) open and maintain a bank account in his or her name as receiver or receiver-manager of the corporation for the moneys of the corporation coming under his or her control;
- (d) keep detailed accounts of all transactions carried out by the receiver or receiver-manager as receiver or receiver-manager;
- (e) keep accounts of his or her administration, which must be available during usual business hours for inspection by the directors of the corporation;
- (f) prepare at least once in every six-month period after the date of his or her appointment financial statements of his or her administration as far as is practicable in the form required by section 254;
- (g) upon completion of his or her duties, render a final account of his or her administration in the form adopted for interim accounts under paragraph (f); and
- (h) file with the Registrar a copy of any financial statement mentioned in paragraph (f) and any final account mentioned in

paragraph (g) within fifteen days of the preparation of the financial statement or rendering of the final account, as the case may be.

PART VIII

DIRECTORS AND OFFICERS

Duty to
manage

163. Subject to any unanimous shareholder agreement, the directors of a corporation must

- (a) exercise the powers of the corporation directly or indirectly through the employees and agents of the corporation; and
- (b) direct the management of the business and affairs of the corporation.

Number of
directors

164. A corporation must have one or more directors but a corporation, any of the issued securities of which are or were part of a distribution to the public, may have no fewer than three directors, at least two of whom are not officers or employees of the corporation or its affiliates.

Restrictions

165. If the articles restrict in whole or in part the powers of the directors to manage the business and affairs of the corporation, the shareholders have all the rights, powers and duties of the directors to the extent the articles restrict the powers of the directors, and the directors are thereby relieved of their duties and liabilities to the same extent.

Directors'
amendments
of by-laws

166.(1) Unless the articles, by-laws or a unanimous shareholder agreement otherwise provide, the directors may by resolution make, amend, or repeal

any by-laws that regulate the business or affairs of the corporation.

(2) The directors must submit a by-law, or an amendment or a repeal of a by-law, made under subsection (1) to the shareholders at the next meeting of shareholders, and the shareholders may, by ordinary resolution, confirm, reject or amend the by-law or its amendment or repeal.

(3) A by-law, or an amendment or a repeal of a by-law, is effective from the date of the resolution of the directors under subsection (1) until

(a) it is confirmed, confirmed as amended or rejected by the shareholders under subsection (2), or

(b) it ceases to be effective under subsection (4),

and, where the by-law is confirmed or confirmed as amended, it continues in effect in the form in which it was so confirmed.

(4) If a by-law or an amendment or a repeal thereof is rejected by the shareholders, or if the directors do not submit a by-law or an amendment or a repeal thereof to the shareholders as required under subsection (2), the by-law or amendment or repeal thereof ceases to be effective and no subsequent resolution of the directors to make, amend or repeal a by-law having substantially the same purpose or effect is effective until it is confirmed or confirmed as amended by the shareholders.

(5) A shareholder entitled to vote at an annual meeting of shareholders may, in accordance with sections 220 to

228, make a proposal to make, amend or repeal a by-law.

Organization
meeting

167.(1) After issue of the certificate of incorporation, a meeting of the directors of the corporation must be held at which the directors may

- (a) make by-laws;
- (b) adopt forms of security certificates and corporate records;
- (c) authorize the issue of securities;
- (d) appoint officers;
- (e) appoint an auditor to hold office until the first annual meeting of shareholders;
- (f) make banking arrangements; and
- (g) transact any other business.

(2) An incorporator or a director may call the meeting of directors referred to in subsection (1) by giving not less than five days notice thereof by mail to each director, stating the time and place of the meeting.

(3) Subsection (1) does not apply to a corporation to which a certificate of amalgamation has been issued under section 290 or to which a certificate of continuance has been issued under section 292.

Persons dis-
qualified as
directors

168. The following persons are disqualified from being a director of a corporation

- (a) anyone who is less than nineteen years of age;

- (b) anyone who is of unsound mind and has been so found by a court in Canada or elsewhere;
- (c) a person who is not an individual; and
- (d) a person who has the status of a bankrupt.

Share
qualifi-
cation

169. Unless the articles otherwise provide, a director of a corporation is not required to hold shares issued by the corporation.

Residency
requirement

170.(1) A majority of the directors of a corporation must be resident Canadians.

(2) Notwithstanding subsection (1), not more than one-third of the directors of a holding corporation need be resident Canadians if the holding corporation earns in Canada directly or through its subsidiaries less than five per cent of the gross revenues of the holding corporation and all of its subsidiary bodies corporate together as shown in the most recent consolidated financial statements of the holding corporation or the most recent financial statements of the holding corporation and its subsidiary bodies corporate.

Notice of
directors &
term of
office

171.(1) At the time of sending articles of incorporation, the incorporators must send to the Registrar a notice of directors in the prescribed form and the Registrar must file the notice.

(2) Each director named in the notice referred to in subsection (1) holds office from the issue of the certificate of incorporation until the first meeting of shareholders.

(3) Subject to paragraph (b) of section 172, shareholders of a corporation must, by ordinary resolution at the first meeting of shareholders and at each succeeding annual meeting at which an election of directors is required, elect directors to hold office for a term expiring not later than the close of the third annual meeting of shareholders following the election.

(4) It is not necessary that all directors elected at a meeting of shareholders hold office for the same term.

(5) A director not elected for an expressly stated term ceases to hold office at the close of the first annual meeting of shareholders following the director's election.

(6) Notwithstanding subsections (2), (3) and (5), if directors are not elected at a meeting of shareholders, the incumbent directors continue in office until their successors are elected.

(7) If a meeting of shareholders fails to elect the number or the minimum number of directors required by the articles by reason of the disqualification, incapacity or death of any candidates, the directors elected at that meeting may exercise all the powers of the directors if the number of directors so elected constitutes a quorum.

Cumulative
voting

172. Where the articles provide for cumulative voting, the following rules apply:

- (a) the articles must require a fixed number and not a minimum and maximum number of directors;

- (b) each shareholder entitled to vote at an election of directors has the right to cast a number of votes equal to the number of votes attached to the shares held by the shareholder multiplied by the number of directors to be elected, and the shareholder may cast all such votes in favour of one candidate or distribute them among the candidates in any manner;
- (c) a separate vote of shareholders must be taken with respect to each candidate nominated for director unless a resolution is passed unanimously permitting two or more persons to be elected by a single resolution;
- (d) if a shareholder has voted for more than one candidate without specifying the distribution of the shareholder's votes among the candidates, the shareholder has distributed his or her votes equally among the candidates for whom the shareholder voted;
- (e) if the number of candidates nominated for director exceeds the number of positions to be filled, the candidates who receive the least number of votes must be eliminated until the number of candidates remaining equals the number of positions to be filled;
- (f) each director ceases to hold office at the close of the first annual meeting of shareholders following his election;

- (g) a director may not be removed from office if the votes cast against the director's removal would be sufficient to elect the director and those votes could be voted cumulatively at an election at which the same total number of votes were cast and the number of directors required by the articles were then being elected; and
- (h) the number of directors required by the articles may not be decreased if the votes cast against the motion to decrease would be sufficient to elect a director and those votes could be voted cumulatively at an election at which the same total number of votes were cast and the number of directors required by the articles were then being elected.

Directors
cease to
hold office

173. A director of a corporation ceases to hold office when

- (a) the director dies or resigns;
- (b) the director is removed in accordance with section 175; or
- (c) the director becomes disqualified under section 168.

Resignation
of director

174. A resignation of a director becomes effective at the time a written resignation is sent to the corporation, or at the time specified in the resignation, whichever is later.

Removal of
directors,
etc.

175.(1) Subject to paragraph (g) of section 172, the shareholders of a corporation may by ordinary resolution at a special meeting remove any director or directors from office.

(2) Where the holders of any class or series of shares of a corporation have an exclusive right to elect one or more directors, a director so elected may only be removed by an ordinary resolution at a meeting of the shareholders of that class or series.

(3) Subject to paragraphs (b) to (e) of section 172, a vacancy created by the removal of a director may be filled at the meeting of the shareholders at which the director is removed, or if not so filled, may be filled under section 177.

Director's
rights re
shareholders

176.(1) A director of a corporation is entitled to receive notice of and to attend and be heard at every meeting of shareholders.

(2) A director who

(a) resigns;

(b) receives a notice or otherwise learns of a meeting of shareholders called for the purpose of removing the director from office; or

(c) receives a notice or otherwise learns of a meeting of directors or shareholders at which another person is to be appointed or elected to fill the office of director, whether because of his or her resignation or removal or because his or her term of office has expired or is about to expire,

is entitled to submit to the corporation a written statement giving the reasons for his or her resignation or the reasons why the director opposes any proposed action or resolution.

(3) A corporation must forthwith send a copy of the statement referred to in subsection (2) to every shareholder entitled to receive notice of any meeting referred to in subsection (1) and, where the corporation is a distributing corporation, to the Registrar unless the statement is included in or attached to a management proxy circular required by section 247.

(4) No corporation or person acting on its behalf incurs any liability by reason only of circulating a director's statement in compliance with subsection (3).

Filling
vacancy
among
directors

177.(1) Notwithstanding subsection (3) of section 180, but subject to subsections (3) and (4), a quorum of directors may fill a vacancy among the directors, except a vacancy resulting from an increase in the number or minimum number of directors or from a failure to elect the number or minimum number of directors required by the articles.

(2) If there is not a quorum of directors, or if there has been a failure to elect the number or minimum number of directors required by the articles, the directors then in office must forthwith call a special meeting of shareholders to fill the vacancy and, if they fail to call a meeting or if there are no directors then in office, the meeting may be called by any shareholder.

(3) Where the holders of any class or series of shares of a corporation have an exclusive right to elect one or more directors and a vacancy occurs among those directors

(a) then, subject to subsection (4), the remaining directors

elected by that class or series may fill the vacancy except a vacancy resulting from an increase in the number or minimum number of directors for that class or series or from a failure to elect the number or minimum number of directors for that class or series; or

- (b) if there are no such remaining directors, any holder of shares of that class or series may call a meeting of the holders thereof for the purpose of filling the vacancy.

(4) The articles may provide that a vacancy among the directors be filled only

- (a) by a vote of the shareholders, or
- (b) by a vote of the holders of any class or series of shares having an exclusive right to elect one or more directors, if the vacancy occurs among the directors elected by that class or series.

(5) A director appointed or elected to fill a vacancy holds office for the unexpired term of his or her predecessor.

Changing
number of
directors

178.(1) The shareholders of a corporation may amend the articles to increase or, subject to paragraph (h) of section 172, to decrease the number of directors, or the minimum or maximum number of directors, but no decrease shortens the term of an incumbent director.

(2) Where the shareholders adopt an amendment to the articles of a corporation to increase the number or minimum number of directors, the shareholders may, at the meeting at which they adopt the amendment, elect the additional number of directors authorized by the amendment, and for that purpose, notwithstanding subsection (2) of section 282 and subsection (3) of section 388, on the issue of a certificate of amendment the articles are deemed to be amended as of the date the shareholders adopt the amendment to the articles.

Notice of
change of
directors

179.(1) Within fifteen days after a change is made among its directors, a corporation must send to the Registrar a notice in the prescribed form setting out the change and the Registrar must file the notice.

(2) Any interested person, or the Registrar, may apply to a court for an order to require a corporation to comply with subsection (1), and the court may so order and make any further order it thinks fit.

Meeting of
directors

180.(1) Unless the articles or by-laws otherwise provide, the directors may meet at any place, and upon such notice as the by-laws require.

(2) Subject to the articles or by-laws, a majority of the number of directors or minimum number of directors required by the articles constitutes a quorum at any meeting of directors and, notwithstanding any vacancy among the directors, a quorum of directors may exercise all the powers of the directors.

(3) Directors, other than directors of a corporation referred to in subsection (2) of section 170, shall not transact business at a meeting of directors.

ectors unless a majority of directors present are resident Canadians.

(4) Notwithstanding subsection (3), directors may transact business at a meeting of directors when a majority of resident Canadian directors is not present, if

- (a) a resident Canadian director who is unable to be present approves, in writing or by telephone or other communications facilities, the business transacted at the meeting; and
- (b) a majority of resident Canadian directors would have been present had that director been present at the meeting.

Notice of
meeting of
directors

181.(1) A notice of a of meeting of directors must specify any matter referred to in subsection (3) of section 185 that is to be dealt with at the meeting but, unless the by-laws otherwise provide, the notice need not specify the purpose of or the business to be transacted at the meeting.

(2) A director may in any manner waive a notice of a meeting of directors; and attendance of a director at a meeting of directors is a waiver of notice of the meeting, except when a director attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

Notice of
adjourned
meeting

182. Notice of an adjourned meeting of directors is not required to be given if the time and place of the adjourned meeting is announced at the original meeting.

One direct-
or meeting

183. Where a corporation has only one director, that director may constitute a meeting.

Meeting by
telephone

184.(1) Subject to the by-laws, a director may, if all the directors of the corporation consent, participate in a meeting of directors or of a committee of directors by means of such telephone or other communications facilities as permit all persons participating in the meeting to hear each other.

(2) Any director participating in a meeting by such means as are described in subsection (1) is, for the purposes of this Act, present at that meeting.

Delegation
of direct-
or's duties

185.(1) Directors of a corporation may appoint from their number a managing director who is a resident Canadian or a committee of directors and delegate to the managing director or committee any of the powers of the directors.

(2) If the directors of a corporation, other than a corporation referred to in subsection (2) of section 170, appoint a committee of directors, a majority of the members of the committee must be resident Canadians.

(3) Notwithstanding subsection (1), no managing director and no committee of directors may

- (a) submit to the shareholders any question or matter requiring the approval of the shareholders;
- (b) fill a vacancy among the directors or in the office of auditor;
- (c) issue securities except in the manner and on the terms authorized by the directors;

- (d) declare dividends;
- (e) purchase, redeem or otherwise acquire shares issued by the corporation;
- (f) pay a commission referred to in section 74;
- (g) approve a management proxy circular referred to in Part XI;
- (h) approve any financial statements referred to in section 254;
- (i) approve a take-over bid circular or director's circular referred to in Part XIV; or
- (i) adopt, amend or repeal by-laws.

Validity of
acts

186. An act of a director or officer is valid notwithstanding an irregularity in the director's or officer's election or appointment or a defect in the director's or officer's qualification.

Resolution
in lieu of
meeting

187.(1) Where a resolution in writing is signed by all the directors entitled to vote on that resolution at a meeting of directors or committee of directors,

- (a) the resolution is as valid as if it had been passed at a meeting of directors or committee of directors; and
- (b) the resolution satisfies all the requirements of this Act relating to meetings of directors or a committee of directors.

(2) A copy of every resolution referred to in subsection (1) must be kept with the minutes of the proceedings of the directors or committee of directors.

Directors'
liability
for share
issue

188. Directors of a corporation who vote for or consent to a resolution authorizing the issue of a share under section 51 for a consideration other than money are jointly and severally liable to the corporation to make good any amount by which the consideration received is less than the fair equivalent of the money that the corporation would have received if the share had been issued for money on the date of the resolution.

Directors
liabilities
for other
acts

189. Directors of a corporation who vote for or consent to a resolution authorizing

- (a) a purchase, redemption or other acquisition of shares contrary to section 62, 63 or 64;
- (b) a commission contrary to section 74;
- (c) a payment of a dividend contrary to section 75;
- (d) financial assistance contrary to sections 77 and 78;
- (e) a payment of an indemnity contrary to any of the provisions of sections 201 to 205; or
- (f) a payment to a shareholder contrary to any of the provisions of sections 300 to 309 or 366,

are jointly and severally liable to restore to the corporation any amounts so distributed or paid and not otherwise recovered by the corporation.

Contributions
from other
directors

190. A director who has satisfied a judgment rendered under section 188 or 189 is entitled to contribution from the other directors who voted for or consented to the unlawful act upon which the judgment was founded.

Recovery
by directors

191.(1) A director liable under section 189 is entitled to apply to a court for an order compelling a shareholder or other recipient to pay or deliver to the director any money or property that was paid or distributed to the shareholder or other recipient contrary to section 62, 63, 64, 74, 75, 77, 78, 201 to 205, 300 to 309 or 366.

(2) In connection with an application under subsection (1), a court may, if it is satisfied that it is equitable to do so,

- (a) order a shareholder or other recipient to pay or deliver to a director any money or property that was paid or distributed to the shareholder or other recipient contrary to section 62, 63, 64, 74, 75, 77, 78, 201 to 205, 300 to 309 or 366;
- (b) order a corporation to return or issue shares to a person from whom the corporation has purchased, redeemed or otherwise acquired shares; and
- (c) make any further order it thinks fit.

Defence to
liability
of directors

192. A director is not liable under section 188 if the director proves that he or she did not know and could not reasonably have known that the share was issued for a consideration less than the fair equivalent of the money that the corporation would have received if the share had been issued for money.

Time
limited
for action

193. An action to enforce a liability imposed by section 188 or 189 may not be commenced after two years from the date of the resolution authorizing the action complained of.

Interest in
contract by
director

194.(1) A director or officer of a corporation

- (a) who is a party to a material contract or proposed material contract with the corporation;
or
- (b) who is a director or an officer of or has a material interest in any person who is a party to a material contract or proposed material contract with the corporation,

must disclose in writing to the corporation, or request to have entered in the minutes of meetings of directors, the nature and extent of his or her interest.

(2) The disclosure required by subsection (1) must be made, in the case of a director,

- (a) at the meeting at which a proposed contract is first considered;
- (b) if the director was not then interested in a proposed contract, at the first meeting

after the director becomes so interested;

- (c) if the director becomes interested after a contract is made, at the first meeting after the director becomes so interested; or
- (d) if a person who is interested in a contract later becomes a director, at the first meeting after that person becomes a director.

(3) The disclosure required by subsection (1) must be made, in the case of an officer who is not a director,

- (a) forthwith after the officer becomes aware that the contract or proposed contract is to be considered or has been considered at a meeting of directors;
- (b) if the officer becomes interested after a contract is made, forthwith after the officer becomes so interested; or
- (c) if a person who is interested in a contract later becomes an officer, forthwith after that person becomes an officer.

(4) If a material contract or proposed material contract is one that, in the ordinary course of the corporation's business, would not require approval by the directors or shareholders, a director or officer must disclose in writing to the corporation or request to have entered in the minutes of meetings of directors the nature and extent of his or her interest forthwith after the

director or officer becomes aware of the contract or proposed contract.

(5) A director referred to in subsection (1) may vote on any resolution to approve the contract if the contract is

- (a) an arrangement by way of security for money lent to or obligations undertaken by the director for the benefit of the corporation or an affiliate;
- (b) a contract relating primarily to his or her remuneration as a director, officer, employee or agent of the corporation or an affiliate;
- (c) a contract for indemnity or insurance under sections 201 to 205; or
- (d) a contract with an affiliate.

Continuing disclosure

195. For the purposes of section 194, a general notice to the directors by a director or officer that declares that the director or officer is a director or officer of or has a material interest in a person and is to be regarded as interested in any contract made with that person, is a sufficient declaration of interest in relation to any contract so made.

Avoidance standards

196. A material contract between a corporation and one or more of its directors or officers, or between a corporation and another person of which a director or officer of the corporation is a director or officer or in which a director or officer has a material interest, is neither void nor voidable

- (a) by reason only of that relationship; or
- (b) by reason only that a director with an interest in the contract is present at or is counted to determine the presence of a quorum at a meeting of directors or committee of directors that authorized the contract,

if the director or officer disclosed his or her interest in accordance with subsection (2), (3), (4) of section 194 or section 195, as the case may be, and the contract was approved by the directors or the shareholders and was reasonable and fair to the corporation at the time it was approved.

Setting
contract
aside

197. Where a director or officer of a corporation fails to disclose his or her interest in a material contract in accordance with section 194 or 195, a court may, upon the application of the corporation or a shareholder of the corporation, set aside the contract on such terms as it thinks fit.

Appoint-
ment of
officers

198. Subject to the articles, the by-laws or any unanimous shareholder agreement,

- (a) the directors may designate the offices of the corporation, appoint as officers persons of full capacity, specify their duties and delegate to them powers to manage the business and affairs of the corporation, except powers to do anything referred to in subsection (3) of section 185;

- (b) a director may be appointed to any office of the corporation; and
- (c) two or more offices of the corporation may be held by the same person.

Duties of
directors
and officers

199.(1) Every director and officer of a corporation in exercising his or her powers and discharging his or her duties must

- (a) act honestly and in good faith with a view to the best interests of the corporation; and
- (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

(2) Every director and officer of a corporation must comply with this Act, the regulations, articles, by-laws and any unanimous shareholder agreement.

(3) Subject to subsection (3) of section 241, no provision in a contract, the articles, the by-laws or a resolution relieves a director or officer from the duty to act in accordance with this Act or the regulations or relieves the director or officer from liability for a breach thereof.

Dissent to
acts of
other
directors

200.(1) A director who is present at a meeting of directors or committee of directors consents to any resolution passed or action taken unless

- (a) the director requests that his or her dissent be or his or her dissent is entered in the minutes of the meeting;
- (b) the director sends his or her written dissent to the secret-

ary of the meeting before the meeting is adjourned; or

- (c) the director sends his or her dissent by registered mail or delivers it to the registered office of the corporation immediately after the meeting is adjourned.

(2) A director who votes for or consents to a resolution is not entitled to dissent under subsection (1).

(3) A director who was not present at a meeting at which a resolution was passed or action taken is presumed to have consented thereto unless within seven days after the director becomes aware of the resolution the director

- (a) causes his or her dissent to be placed with the minutes of the meeting; or
- (b) sends his or her dissent by registered mail or delivers it to the registered office of the corporation.

Indemnifi-
cation by
corpor-
ation

201.(1) Except in respect of an action by or on behalf of a corporation or body corporate to procure a judgment in its favour, a corporation may indemnify

- (a) a director or officer of the corporation,
- (b) a former director or officer of the corporation, or
- (c) a person who acts or acted at the corporation's request as a director or officer of a body corporate of which the corporation is or was a shareholder or creditor,

and his or her heirs and legal representatives, against all costs, charges and expenses (including an amount paid to settle an action or satisfy a judgment) reasonably incurred by the person in respect of any civil, criminal or administrative action or proceeding to which the person is made a party by reason of being or having been a director or officer of that corporation or body corporate.

(2) Subsection (1) does not apply unless the director or officer to be so indemnified

- (a) acted honestly and in good faith with a view to the best interests of the corporation; and
- (b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, had reasonable grounds for believing that his or her conduct was lawful.

Indemnification in derivative actions

202. A corporation may with the approval of a court indemnify a person referred to in section 201 in respect of an action by or on behalf of the corporation or body corporate to procure a judgment in its favour, to which the person is made a party by reason of being or having been a director or an officer of the corporation or body corporate, against all costs, charges and expenses reasonably incurred by the person in connection with the action if the person fulfils the conditions set out in paragraphs (a) and (b) of subsection (2) of section 201.

Rights to indemnify

203. Notwithstanding anything in section 201 or 202, a person described in section 201 is entitled to indemnify

from the corporation in respect of all costs, charges and expenses reasonably incurred by the person in connection with the defence of any civil, criminal or administrative action or proceeding to which the person is made a party by reason of being or having been a director or officer of the corporation or body corporate, if the person seeking indemnity

- (a) was substantially successful on the merits in his or her defence of the action or proceeding;
- (b) qualifies in accordance with the standards set out in section 201 or 202; and
- (c) is fairly and reasonably entitled to indemnity.

Directors'
and
officers'
insurance

204. A corporation may purchase and maintain insurance for the benefit of any person referred to in section 201 against any liability incurred by the person

- (a) in his or her capacity as a director or officer of the corporation, except where the liability relates to his or her failure to act honestly and in good faith with a view to the best interests of the corporation; or
- (b) in his or her capacity as a director or officer of another body corporate where he or she acts or acted in that capacity at the corporation's request, except where the liability relates to his or her failure to act honestly and in good faith with a view to the best

interests of the body
corporate.

Court appro-
val of
indemnity

205.(1) A corporation or a person referred to in section 201 may apply to a court for an order approving an indemnity under that section and the court may so order and make any further order it thinks fit.

(2) An applicant under subsection (1) must give the Registrar notice of the application and the Registrar is entitled to appear and be heard in person or by counsel.

(3) Upon an application under subsection (1), the court may order notice to be given to any interested person and that person is entitled to appear and be heard in person or by counsel.

Remunerat-
ion of
directors,
etc.

206. Subject to the articles, the by-laws or any unanimous shareholder agreement, the directors of a corporation may fix the remuneration of the directors, officers and employees of the corporation.

PART IX

INSIDER TRADING

Definition
of "insider"

207. In this Part, "insider" means, in respect of a corporation,

- (a) a director or an officer of the corporation;
- (b) a corporation that purchases or otherwise acquires shares issued by it or by any of its affiliates;
- (c) a person who beneficially owns more than ten per cent of the shares of the corporation or

who exercises control or direction over more than ten per cent of the votes attached to the shares of the corporation;

- (d) a person employed or retained by the corporation;
- (e) an associate or affiliate of a person mentioned in paragraph (a) or (d); and
- (f) a person who
 - (i) receives specific confidential information from a person described in this section (including a person described in this paragraph), and
 - (ii) has knowledge that the person giving the information is a person described in this section (including a person described in this paragraph).

Presumed
insider

208.(1) For the purposes of this Part,

- (a) a director or officer of a body corporate that is an insider of a corporation is an insider of the corporation;
- (b) a director or officer of a body corporate that is a subsidiary is an insider of its holding corporation;
- (c) a person presumed to own beneficially shares beneficially owned by a body corporate controlled by the person directly or indirectly; and

- (d) a body corporate is presumed to own beneficially shares beneficially owned by its affiliates.
- (2) For the purposes of this Part,
 - (a) if a body corporate becomes an insider of a corporation, or enters into a business combination with a corporation, a director or officer of the body corporate is presumed to have been an insider of the corporation for the previous six months or for such shorter period as the director or officer of the body corporate was a director or an officer of the body corporate; and
 - (b) if a corporation becomes an insider of a body corporate, or enters into a business combination with a body corporate, a director or an officer of the body corporate is presumed to have been an insider of the corporation for the previous six months or for such shorter period as the director or officer of the body corporate was a director or officer of the body corporate.
- (3) In subsection (2) "business combination" means an acquisition of all or substantially all the property of one body corporate by another or an amalgamation of two or more bodies corporate.

Liability
of insider

209. An insider who, in connection with a transaction in a security of the corporation or any of its affiliates, makes use of any specific confidential information for his or her own benefit

or advantage that, if generally known, might reasonably be expected to affect materially the value of the security

- (a) is liable to compensate any person for any direct loss suffered by that person as a result of the transaction, unless the information was known or in the exercise of reasonable diligence should have been known to that person; and
- (b) is accountable to the corporation for any direct benefit or advantage received or receivable by the insider as a result of the transaction.

Time
limited on
action

210. An action to enforce a right created by section 209 may not be commenced except within two years after the discovery of the facts that gave rise to the cause of action.

PART X

SHAREHOLDERS

Meeting in
province

211.(1) Meetings of shareholders of a corporation must be held at the place within the province that is provided for in the by-laws or, in the absence of such provision, at the place within the province that the directors determine.

(2) Notwithstanding subsection (1), a meeting of shareholders of a corporation may be held outside the province if all the shareholders entitled to vote at that meeting so agree.

(3) A shareholder who attends a meeting of shareholders held outside the

province has so agreed unless the shareholder attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully held.

Meetings
outside
province

212. Notwithstanding section 211, if the articles so provide, meetings of shareholders may be held outside the province at one or more places specified in the articles.

Calling
meetings

213. The directors of a corporation

- (a) must call an annual meeting of shareholders not later than eighteen months after the corporation comes into existence and subsequently not later than fifteen months after holding the last preceding annual meeting; and
- (b) may at any time call a special meeting of shareholders.

Fixing
record date

214.(1) For the purpose of determining shareholders

- (a) who are entitled to receive payment of a dividend;
- (b) who are entitled to participate in a liquidation distribution; or
- (c) for any other purpose except the right to receive notice or to vote at a meeting,

the directors may fix in advance a date as the record date for such determination of shareholders, but such record date must not precede by more than fifty days the particular action to be taken.

(2) For the purpose of determining shareholders entitled to receive notice of a meeting of shareholders, the directors may fix in advance a date as the record date for the determination of shareholders, but that record date must not precede by more than fifty days or by less than twenty-one days the date on which the meeting is to be held.

Statutory
date of record

215. If no record date is fixed,
- (a) the record date for the determination of shareholders entitled to receive notice of a meeting of shareholders is
 - (i) at the close of business on the day immediately preceding the day on which the notice is given, or
 - (ii) if no notice is given, the day on which the meeting is held; and
 - (b) the record date for the determination of shareholders for any purpose other than that specified in paragraph (a) is at the close of business on the day on which the directors pass the resolution relating thereto.

Notice of
record
date

216. If a record date is fixed under section 214, notice thereof must, not less than seven days before the date so fixed, be given

- (a) by advertisement in a newspaper published or distributed in the place where the corporation has its registered office and in each place in Canada where it has a transfer agent or where a transfer of

its shares may be recorded;
and

- (b) by written notice to each stock exchange in Canada on which the shares of the corporation are listed for trading.

Notice of
meetings

217.(1) Notice of the time and place of a meeting of shareholders must be sent not less than twenty-one days nor more than fifty days before the meeting

- (a) to each shareholder entitled to vote at the meeting;
- (b) to each director; and
- (c) to the auditor of the corporation.

(2) A notice of a meeting is not required to be sent to shareholders who were not registered on the records of the corporation or its transfer agent on the record date determined under section 214 or 215, as the case may be, but failure to receive notice does not deprive a shareholder of the right to vote at the meeting.

(3) If a meeting of shareholders is adjourned for less than thirty days it is not necessary, unless the by-laws otherwise provide, to give notice of the adjourned meeting, other than by announcement at the earliest meeting that is adjourned.

(4) If a meeting of shareholders is adjourned by one or more adjournments for an aggregate of thirty days or more, notice of the adjourned meeting must be given as for an original meeting but, unless the meeting is adjourned by one or more adjournments for an aggregate of

more than ninety days, subsection (1) of section 236 does not apply.

Special
business

218.(1) All business transacted at a special meeting of shareholders and all business transacted at an annual meeting of shareholders, except consideration of the financial statements, auditor's report; election of directors and reappointment of the incumbent auditor, is special business.

(2) Notice of a meeting of shareholders at which special business is to be transacted must state

- (a) the nature of that business in sufficient detail to permit the shareholder to form a reasonable judgment thereon; and
- (b) the text of any special resolution to be submitted to the meeting.

Waiver of
notice of
meeting

219.(1) A shareholder and any other person entitled to attend a meeting of shareholders may in any manner waive notice of a meeting of shareholders.

(2) The attendance of any person at a meeting of shareholders is a waiver of notice of the meeting by that person unless the person attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

Shareholder
"proposals"

220. A shareholder who is entitled to vote at an annual meeting of shareholders may

- (a) submit to the corporation notice of any matter that the shareholder proposes to raise

at the meeting (hereinafter in this Part, referred to as a "proposal"); and

- (b) discuss at the meeting any matter in respect of which the shareholder would have been entitled to submit a proposal.

Proposal in
management
proxy
circular

221.(1) A corporation that solicits proxies must set out the proposal in the management proxy circular required by section 247 or attach the proposal thereto.

(2) If so requested by the shareholder, the corporation must include in the management proxy circular or attach thereto

- (a) a statement by the shareholder of not more than two hundred words in support of the proposal, and
- (b) the name and address of the shareholder.

Nomination
for direct-
or in pro-

222. A proposal may include nominations for the election of directors if the proposal is signed by one or more holders of shares representing in the aggregate not less than five per cent of shares or five per cent of the shares of a class or series of shares of the corporation entitled to vote at the meeting to which the proposal is to be presented; but this section does not preclude nominations made at a meeting of shareholders of a corporation that is not required to solicit proxies under section 246.

When non-
compliance

223. A corporation is not required to comply with section 221 if

with s.221
allowed

- (a) the proposal is not submitted to the corporation at least ninety days before the anniversary date of the previous annual meeting of shareholders;
- (b) it clearly appears that the proposal is submitted by the shareholder primarily for the purpose of enforcing a personal claim or redressing a personal grievance against the corporation or its directors, officers or security holders, or primarily for the purpose of promoting general economic, political, racial, religious, social or similar causes;
- (c) the corporation, at the shareholder's request, included a proposal in a management proxy circular relating to a meeting of shareholders held within two years preceding the receipt of such request, and the shareholder failed to present the proposal, in person or by proxy, at the meeting;
- (d) substantially the same proposal was submitted to shareholders in a management proxy circular or a dissident's proxy circular relating to a meeting of shareholders held within two years preceding the receipt of the shareholder's request and the proposal was defeated; or
- (e) the rights conferred by this section are being abused to secure publicity.

- Immunity re
proposal
224. No corporation or person acting on its behalf incurs any liability by reason only of circulating a proposal or statement in compliance with section 221 or 247.
- Notice of
refusal
225. When a corporation refuses to include a proposal in a management proxy circular, the corporation must, within ten days after receiving the proposal,
- (a) notify the shareholder who is submitting the proposal of the corporation's intention to omit the proposal from the management proxy circular; and
 - (b) send to the shareholder a statement of the reasons for the refusal.
- Right to
restrain
meeting
226. Upon the application of a shareholder claiming to be aggrieved by a corporation's refusal under section 225, a court may restrain the holding of the meeting to which the proposal is sought to be presented and make any further order it thinks fit.
- Right to
omit
proposal
227. A corporation or any person claiming to be aggrieved by a proposal may apply to a court for an order permitting the corporation to omit the proposal from the management proxy circular, and the court, if it is satisfied that section 223 applies, may make such order as it thinks fit.
- Registrar
entitled
to notice
228. An applicant under section 226 or 227 must give the Registrar notice of the application and the Registrar is entitled to appear and be heard in person or by counsel.
- Shareholder
list and
effect
- 229.(1) A corporation must prepare a list of the shareholders who are entitled to receive notice of a meeting,

arranged in alphabetical order showing the number of shares held by each shareholder,

- (a) if a record date is fixed under subsection (2) of section 214, not later than ten days after that date; or
- (b) if no record date is fixed,
 - (i) at the close of business on the day immediately preceding the day on which the notice is given, or
 - (ii) if no notice is given, on the day on which the meeting was held.

(2) Where a corporation fixes a record date under subsection (2) of section 214, a person named in the list prepared under paragraph (a) of subsection (1) is entitled to vote the shares shown opposite the person's name at the meeting to which the list relates, except to the extent that

- (a) the person has transferred the ownership of any of his or her shares after the record date; and
- (b) the transferee of the shares referred to in paragraph (a)
 - (i) produces properly endorsed share certificates, or
 - (ii) otherwise establishes that the transferee of the shares owns the shares,

and demands, not later than ten days before the meeting, that his or her name be included in the list before the meeting,

in which case the transferee is entitled to vote his or her shares at the meeting.

(3) Where a corporation does not fix a record date under subsection (2) of section 214, a person named in a list prepared under paragraph (b) of subsection (1) is entitled to vote the shares shown opposite his or her name at the meeting to which the list relates except to the extent that

- (a) the person has transferred the ownership of any of his or her shares after the date on which a list referred to in subparagraph (i) of paragraph (b) of subsection (1) is prepared; and
- (b) the transferee of those shares
 - (i) produces properly endorsed share certificates, or
 - (ii) otherwise establishes that he or she owns the shares

and demands not later than ten days before the meeting of such shorter period before the meeting as the by-laws of the corporation may provide that his or her name be included in the list before the meeting,

in which case the transferee is entitled to vote his or her shares at the meeting.

Right to
examine list
of share-
holders

230. A shareholder may examine the list of shareholders

- (a) during usual business hours at the registered office of the corporation or at the place where its central securities register is maintained; and
- (b) at the meeting of shareholders for which the list was prepared.

Quorum at
meeting

231.(1) Unless the by-laws otherwise provide, a quorum of shareholders is present at a meeting of shareholders if the holders of a majority of the shares entitled to vote at the meeting are present in person or represented by proxy.

(2) If a quorum is present at the opening of a meeting of shareholders, the shareholders present may, unless the by-laws otherwise provide, proceed with the business of the meeting, notwithstanding that a quorum is not present throughout the meeting.

(3) If a quorum is not present at the opening of a meeting of shareholders, the shareholders present may adjourn the meeting to a fixed time and place but may not transact any other business.

(4) If a corporation has only one shareholder, or only one holder of any class or series of shares, the shareholder present in person or by proxy constitutes a meeting.

Right to
vote

232. Unless the articles otherwise provide, each share of a corporation entitles the holder thereof to one vote at a meeting of shareholders.

- Represent-
ative
voting
- 233.(1) When a body corporate or association is a shareholder of a corporation, the corporation must recognize any individual authorized by a resolution of the directors or governing body of the body corporate or association to represent it at meetings of shareholders of the corporation.
- (2) An individual authorized under subsection (1) may exercise, on behalf of the body corporate or association that the individual represents, all the powers it could exercise if it were an individual shareholder.
- Joint
share-
holders
voting
234. Unless the by-laws otherwise provide, if two or more persons hold shares jointly, one of those holders present at a meeting of shareholders may, in the absence of the others, vote the shares; but if two or more of those persons who are present, in person or by proxy, vote, they must vote as one on the shares jointly held by them.
- Voting
method
- 235.(1) Unless the by-laws otherwise provide, voting at a meeting of shareholders must be by show of hands except when a ballot is demanded by a shareholder or proxyholder entitled to vote at the meeting.
- (2) A shareholder or proxyholder may demand a ballot either before or after any vote by show of hands.
- Resolution
in lieu of
meeting
- 236.(1) Except where a written statement is submitted by a director under section 176 or by an auditor under section 269
- (a) a resolution in writing signed by the shareholders entitled to vote on that resolution at a meeting of shareholders is as valid as if it had been

passed at a meeting of the shareholders; and

- (b) a resolution in writing dealing with all matters required by this Act to be dealt with at a meeting of shareholders, and signed by the shareholders entitled to vote at that meeting, satisfies all the requirements of this Act relating to meetings of shareholders.

(2) A copy of every resolution referred to in subsection (1) must be kept with the minutes of the meetings of shareholders.

Requisition
of meeting
by share-
holders

237.(1) The holders of not less than five per cent of the issued shares of a corporation that carry the right to vote at a meeting sought to be held may requisition the directors to call a meeting of shareholders for the purposes stated in the requisition.

(2) The requisition referred to in subsection (1), which may consist of several documents of like form each signed by one or more shareholders, must state the business to be transacted at the meeting and be sent to each director and to the registered office of the corporation.

(3) Upon receiving the requisition referred to in subsection (1), the directors must call a meeting of shareholders to transact the business stated in the requisition, unless

- (a) a record date has been fixed under subsection (2) of section 214 and notice thereof has been given under section 216;
- (b) the directors have called a meeting of shareholders and

have given notice thereof under section 217; or

- (c) the business of the meeting as stated in the requisition includes matters described in paragraphs (b) to (e) of section 223.

(4) If the directors do not within twenty-one days after receiving the requisition referred to in subsection (1) call a meeting, any shareholder who signed the requisition may call the meeting.

(5) A meeting called under this section must be called as nearly as possible in the manner in which meetings are to be called pursuant to the by-laws, this Part and Part XI.

(6) Unless the shareholders otherwise resolve at a meeting called under subsection (4), the corporation must reimburse the shareholders the expenses reasonably incurred by them in requisitioning, calling and holding the meeting.

Meeting
called by
court

238.(1) Upon the application of a director of a corporation, a shareholder who is entitled to vote at a meeting of the shareholders or the Registrar, the court may,

- (a) when for any reason it is impracticable
 - (i) to call a meeting of shareholders in the manner in which meetings of shareholders may be called, or
 - (ii) to conduct the meeting in the manner prescribed by

the by-laws and this Act;
or

- (b) for any other reason thought fit by the court,

order a meeting of shareholders to be called, held and conducted in such manner as the court may direct.

(2) Without restricting the generality of subsection (1), the court may order that a quorum required by the by-laws or this Act be varied or dispensed with at a meeting called, held and conducted pursuant to this section.

(3) A meeting called, held and conducted pursuant to this section is for all purposes a meeting of shareholders of the corporation duly called, held and conducted.

Court re-
view of
election or
appoint-
ment

239.(1) A corporation or a shareholder or director may apply to a court to determine any controversy with respect to an election or appointment of a director or auditor of the corporation.

(2) Upon an application under this section, the court may make any order it thinks fit including, without limiting the generality of the foregoing,

- (a) an order restraining a director or auditor whose election or appointment is challenged from acting pending determination of the dispute;
- (b) an order declaring the result of the disputed election or appointment;
- (c) an order requiring a new election or appointment and including in the order directions

for the management of the business and affairs of the corporation until a new election is held or appointment made; and

- (d) an order determining the voting rights of shareholders and of persons claiming to own shares.

Pooling
agreement
on voting

240. A written agreement between two or more shareholders may provide that in exercising voting rights the shares held by them will be voted as therein provided.

Unanimous
shareholder
agreement

241.(1) An otherwise lawful written agreement among all the shareholders of a corporation, or among all the shareholders and a person who is not a shareholder, that restricts, in whole or in part, the powers of the directors to manage the business and affairs of the corporation is valid.

(2) Subject to section 86, a transferee of shares subject to a unanimous shareholder agreement is deemed to be a party to the agreement.

(3) A shareholder who is a party to a unanimous shareholder agreement has all the rights, powers and duties and incurs all the liabilities of a director of the corporation to which the agreement relates to the extent that the agreement restricts the discretion or powers of the directors to manage the business and affairs of the corporation.

(4) If a person who is the beneficial owner of all the issued shares of a corporation makes a written declaration that restricts in whole or in part the powers of the directors to manage the business and affairs of the corporation,

the declaration constitutes a unanimous shareholder agreement.

(5) Where a unanimous shareholder agreement is executed or terminated, written notice of that fact together with the date of the execution or termination thereof must be filed with the Registrar within fifteen days.

PART XI

PROXIES

Definitions

242.(1) In this Part

- (a) "form of proxy" means a written or printed form that, upon completion and execution by or on behalf of a shareholder, becomes a proxy;
- (b) "proxy" means a completed and executed form of proxy by means of which a shareholder appoints a proxyholder to attend and act on the shareholder's behalf at a meeting of shareholders;
- (c) "registrant" means a securities broker or dealer required to be registered to trade or deal in securities under the laws of any jurisdiction;
- (d) "solicit" or "solicitation" includes, subject to subsection (2),
 - (i) a request for a proxy whether or not accompanied by or included in a form of proxy,
 - (ii) a request to execute or not to execute a form of

proxy or to revoke a proxy,

(iii) the sending of a form of proxy or other communication to a shareholder under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy, and

(iv) the sending of a form of proxy to a shareholder under section 246; and

(e) "solicitation by or on behalf of the management of a corporation" means a solicitation by any person pursuant to a resolution or instructions of, or with the acquiescence of, the directors or a committee of the directors.

(2) The term "solicit" or "solicitation" does not include

(a) the sending of a proxy in response to an unsolicited request made by or on behalf of a shareholder;

(b) the performance of administrative acts or professional services on behalf of a person soliciting a proxy;

(c) the sending by a registrant of the documents referred to in section 251; or

(d) a solicitation by a person in respect of shares of which the person is the beneficial owner.

Appointing
proxyholders

243.(1) A shareholder who is entitled to vote at a meeting of shareholders may by means of a proxy appoint a proxyholder or one or more alternate proxyholders, who are not required to be shareholders, to attend and act at the meeting in the manner and to the extent authorized by the proxy and with the authority conferred by the proxy.

(2) A proxy must be executed by the shareholder or by the shareholder's attorney authorized in writing.

(3) A proxy is valid only at the meeting in respect of which it is given or any adjournment thereof.

Revocation
of proxy

244. A shareholder may revoke a proxy

(a) by depositing an instrument in writing executed by the shareholder or by the shareholder's attorney authorized in writing

(i) at the registered office of the corporation at any time up to and including the last business day preceding the day of the meeting, or an adjournment thereof, at which the proxy is to be used, or

(ii) with the chairman of the meeting on the day of the meeting or an adjournment thereof; or

(b) in any other manner permitted by law.

Deposit
of proxies

245. The directors may specify in a notice calling a meeting of shareholders a time not exceeding forty-eight

hours, (excluding Saturdays and holidays) preceding the meeting or an adjournment thereof before which time proxies to be used at the meeting must be deposited with the corporation or its agent.

Mandatory
solicitation

246. The management of a distributing corporation shall, concurrently with giving notice of a meeting of shareholders, send a form of proxy in prescribed form to each shareholder who is entitled to receive notice of the meeting.

Soliciting
proxies

247. A person shall not solicit proxies unless there is sent to the auditor of the corporation, to each shareholder whose proxy is solicited and, if paragraph (b) applies, to the corporation,

- (a) in the case of solicitation by or on behalf of the management of a corporation, a management proxy circular in prescribed form, either as an appendix to or as a separate document accompanying the notice of the meeting; or
- (b) in the case of any other solicitation, a dissident's proxy circular in prescribed form stating the purposes of the solicitation.

Documents
to be sent
Registrar

248. A person who is required under this Act to send a management proxy circular or dissident's proxy circular shall send concurrently a copy thereof to the Registrar together with a copy of the notice of meeting, form of proxy and any other documents for use in connection with the meeting.

Exemption
order

249. Upon the application of an interested person, the Registrar may, on such terms as the Registrar thinks fit,

exempt that person from any of the requirements of section 246 or 247, which exemption may be given retrospective effect.

Attendance
at meeting

250.(1) A person who solicits a proxy and is appointed proxyholder shall in person

- (a) attend, or cause an alternate proxyholder to attend, the meeting in respect of which the proxy is given; and
- (b) comply with the directions of the shareholder who appointed that person.

(2) A proxyholder or an alternate proxyholder has the same rights as the shareholder who appointed that proxyholder or an alternate proxyholder

- (a) to speak at a meeting of shareholders in respect of any matter;
- (b) to vote by way of ballot at the meeting; and
- (c) except when a proxyholder or an alternate proxyholder has conflicting instructions from more than one shareholder, to vote at the meeting in respect of any matter by way of any show of hands.

Duty of
non-bene-
ficial
owner

251.(1) Shares of a corporation that are registered in the name of a registrant or a registrant's nominee and not beneficially owned by the registrant may not be voted unless the registrant forthwith after receipt thereof sends to the beneficial owner

- (a) a copy of the notice of the meeting, financial statements,

management proxy circular, dissident's proxy circular and any other documents (other than the form of proxy) sent to shareholders by or on behalf of any person for use in connection with the meeting; and

- (b) a written request for such instructions, except where the registrant has received written voting instructions from the beneficial owner.

(2) A registrant may not vote or appoint a proxyholder to vote shares registered in the registrant's name or in the name of the registrant's nominee that the registrant does not beneficially own unless the registrant receives voting instructions from the beneficial owner.

(3) A person by or on behalf of whom a solicitation is made must, at the request of a registrant, forthwith furnish to the registrant at that person's expense the necessary number of copies of the documents referred to in paragraph (a) of subsection (1).

(4) A registrant must vote or appoint a proxyholder to vote any shares referred to in subsection (1) in accordance with any written voting instructions received from the beneficial owner.

(5) If requested by a beneficial owner, a registrant must appoint the beneficial owner or a nominee of the beneficial owner as proxyholder.

(6) The failure of a registrant to comply with this section does not render void any meeting of shareholders or any action taken thereat.

Prohibition governs 252. Nothing in section 251 gives a registrant the right to vote shares that registrant is otherwise prohibited from voting.

Restraining order 253.(1) If a form of proxy, management proxy circular or dissident's proxy circular contains an untrue statement of a material fact or omits to state a material fact required therein or necessary to make a statement contained therein not misleading in the light of the circumstances in which it was made, an interested person or the Registrar may apply to a court.

(2) On an application under this section the court may make an order it thinks fit including, without limiting the generality of the foregoing,

- (a) an order restraining the solicitation, the holding of the meeting, or any person from implementing or acting upon any resolution passed at the meeting to which the form of proxy, management proxy circular or dissident's proxy circular relates;
- (b) an order requiring correction and any form of proxy or proxy circular and a further solicitation; or
- (c) an order adjourning the meeting.

(3) An applicant under this section must give to the Registrar notice of the application and the Registrar is entitled to appear and to be heard in person or by counsel.

PART XII

FINANCIAL DISCLOSURE

Annual
financial
statements

254.(1) Subject to section 255 the directors of a corporation must place before the shareholders at every annual meeting

(a) comparative financial statements, as prescribed, relating separately to

(i) the period that began on the date the corporation came into existence and ended not more than six months before the annual meeting or, if the corporation has completed a financial year, the period that began immediately after the end of the last completed financial year and ended not more than six months before the annual meeting, and

(ii) the immediately preceding financial year;

(b) the report of the auditor, if any; and

(c) any further information respecting the financial position of the corporation and the results of its operations required by the articles, the by-laws or any unanimous shareholder agreement.

(2) Notwithstanding paragraph (a) of subsection (1), the financial statements referred to in subparagraph (ii) of paragraph (a) of subsection (1) may be omitted if the reason for the omission is set out in the financial statements, or in a note thereto, to be placed before the shareholders at an annual meeting.

Exemption

255. Upon the application of a corporation for authorization to omit from its financial statements any item prescribed, or to dispense with the publication of any particular financial statement prescribed, the Registrar may, if the Registrar reasonably believes that disclosure of the information therein contained would be detrimental to the corporation, permit its omission on such reasonable conditions as the Registrar thinks fit.

Consolidated
statements

256.(1) A corporation must keep at its registered office a copy of the financial statements of each of its subsidiary bodies corporate and of each body corporate the accounts of which are consolidated in the financial statements of the corporation.

(2) Shareholders of a corporation and their agents and legal representatives may upon request therefor examine the statements referred to in subsection (1) during the usual business hours of the corporation and may make extracts therefrom free of charge.

(3) A corporation may, within fifteen days of a request to examine statements under subsection (2), apply to a court for an order barring the right of any person to examine those statements; and the court may, if it is satisfied that the examination would be detrimental to the corporation or a subsidiary body corporate, bar the right and make any further order it thinks fit.

(4) A corporation may give the Registrar and the person asking to examine statements under subsection (2) notice of application under subsection (3); and the Registrar and that person may appear and be heard in person or by counsel.

Approval of
financial
statements

257.(1) The directors of a corporation must approve the financial statements referred to in section 254 and the approval shall be evidenced by the signature of one or more directors.

(2) A corporation shall not issue, publish or circulate copies of the financial statements referred to in section 254 unless the financial statements are

(a) approved and signed in accordance with subsection (1); and

(b) accompanied by a report of the auditor of the corporation, if any.

Copies to
shareholders

258. A corporation shall, not less than twenty-one days before each annual meeting of shareholders or before the signing of a resolution under paragraph (b) of subsection (1) of section 236 in lieu of the annual meeting, send a copy of the documents referred to in section 254 to each shareholder except a shareholder who has informed the corporation in writing that he or she does not want a copy of those documents.

Copies to
Registrar

259.(1) A corporation, any of the securities of which are part of a distribution to the public, remain outstanding and are held by more than one person, shall, not less than twenty-one days before each annual meeting of shareholders or forthwith after the signing of a resolution under paragraph (b) of subsection (1) of section 236 in lieu of the annual meeting, and in any event not later than fifteen months after the last date when the last preceding annual meeting should have been held or a resolution in lieu of the meeting should have been signed, send a copy of the documents referred to in section 254 to the Registrar.

(2) If a corporation referred to in subsection (1)

- (a) sends interim financial statements or related documents to its shareholders; or
- (b) is required to file interim financial statements or related documents with or to send them to a public authority or a recognized stock exchange,

the corporation shall forthwith send copies thereof to the Registrar.

(3) A subsidiary corporation is not required to comply with this section, if

- (a) the financial statements of its holding corporation are in consolidated or combined form and include the accounts of the subsidiary; and
- (b) the consolidated or combined financial statements of the holding corporation are included in the documents sent to the Registrar by the holding corporation in compliance with this section.

Disqualifi-
cation of
auditor

260.(1) Subject to subsection (5), a person is disqualified from being an auditor of a corporation who is not independent of the corporation, any of its affiliates, or the directors or officers of any such corporation or its affiliates.

(2) For the purposes of this section,

- (a) independence is a question of fact; and

(b) a person is not independent if the person or that person's business partner

(i) is a business partner, a director, an officer or an employee of the corporation or of any of its affiliates, or a business partner of any director, officer or employee of any such corporation or any of its affiliates,

(ii) beneficially owns or controls, directly or indirectly, a material interest in the securities of the corporation or any of its affiliates, or

(iii) has been a receiver, receiver-manager, liquidator or trustee in bankruptcy of the corporation or any of its affiliates within two years of his or her proposed appointment as auditor of the corporation.

(3) An auditor who becomes disqualified under this section must, subject to subsection (5), resign forthwith after becoming aware of his or her disqualification.

(4) An interested person may apply to a court for an order declaring an auditor to be disqualified under this section and the office of auditor to be vacant.

(5) An interested person may apply to a court for an order exempting an auditor from disqualification under this section and the court may, if it is

satisfied that an exemption would not unfairly prejudice the shareholders, make an exemption order on such terms as it thinks fit, which order may be given retrospective effect.

Appointment
of auditor

261.(1) Subject to section 262, shareholders of a corporation must, by ordinary resolution, at the first annual meeting of shareholders and at each succeeding annual meeting, appoint an auditor to hold office until the close of the next annual meeting.

(2) An auditor appointed under section 167 is eligible for appointment under subsection (1).

(3) Notwithstanding subsection (1), if an auditor is not appointed at a meeting of shareholders, the incumbent auditor continues in office until his or her successor is appointed.

(4) The remuneration of an auditor may be fixed by ordinary resolution of shareholders or, if not so fixed, may be fixed by the directors.

Dispensing
with
auditor

262.(1) The shareholders of a corporation other than a corporation mentioned in subsection (1) of section 259 may resolve not to appoint an auditor.

(2) A resolution under subsection (1) is valid only until the next succeeding annual meeting of shareholders.

(3) A resolution under subsection (1) is not valid unless it is consented to by all the shareholders, including shareholders not otherwise entitled to vote.

(4) Upon the application of a corporation that is a wholly owned subsidiary of a holding body corporate, the

Registrar may exempt the corporation from appointing an auditor in such circumstances as may be prescribed.

When auditor ceases to hold office

263.(1) An auditor of a corporation ceases to hold office when

(a) the auditor dies or resigns; or

(b) the auditor is removed pursuant to section 264.

(2) A resignation of an auditor becomes effective at the time a written resignation is sent to the corporation, or at the time specified in the resignation, whichever is later.

Removal of auditor

264.(1) The shareholders of a corporation may by ordinary resolution at a special meeting remove from office the auditor other than an auditor appointed by a court under section 266.

(2) A vacancy created by the removal of an auditor may be filled at the meeting at which the auditor is removed or, if not so filled, may be filled under section 265.

Filling vacancy of auditor

265.(1) Subject to subsection (3), the directors must forthwith fill a vacancy in the office of auditor.

(2) If there is not a quorum of directors, the directors then in office must, within twenty-one days after a vacancy in the office of auditor occurs, call a special meeting of shareholders to fill the vacancy and, if they fail to call a meeting or if there are no directors, the meeting may be called by any shareholder.

(3) The articles of a corporation may provide that a vacancy in the office

of auditor be filled only by vote of the shareholders.

(4) An auditor appointed to fill a vacancy holds office for the unexpired term of his or her predecessor.

Court
appointed
auditor

266.(1) If a corporation does not have an auditor, the court may, upon the application of a shareholder or the Registrar, appoint and fix the remuneration of an auditor, who holds office until an auditor is appointed by the shareholders.

(2) Subsection (1) does not apply if the shareholders have resolved under section 262 not to appoint an auditor.

Auditor's
right to
attend
meeting

267. The auditor of a corporation is entitled to receive notice of every meeting of shareholders and, at the expense of the corporation, to attend and be heard thereat on matters relating to his or her duties as auditor.

Duty of
auditor to
attend
meeting

268.(1) If a director or shareholder of a corporation, whether or not the shareholder is entitled to vote at the meeting, gives written notice not less than ten days before a meeting of shareholders to the auditor or a former auditor of the corporation, the auditor or former auditor shall attend the meeting at the expense of the corporation and answer questions relating to his or her duties as auditor.

(2) A director or shareholder who sends a notice referred to in subsection (2) shall concurrently send a copy of the notice to the corporation.

Right of
auditor to
submit
statement

269.(1) An auditor who
(a) resigns;

- (b) receives notice or otherwise learns of a meeting of shareholders called for the purpose of removing the auditor from office;
- (c) receives notice or otherwise learns of a meeting of directors or shareholders at which another person is to be appointed to fill the office of auditor, whether because of the resignation or removal of the incumbent auditor or because his or her term of office has expired or is about to expire; or
- (d) receives a notice or otherwise learns of a meeting of shareholders at which a resolution referred to in section 263 is to be proposed,

is entitled to submit to the corporation a written statement giving the reasons for his or her resignation or the reasons why the auditor opposes any proposed action or resolution.

(2) The corporation shall forthwith send a copy of the statement referred to in subsection (1) to every shareholder entitled to receive notice of any meeting referred to in section 267 and to the Registrar unless the statement is included in or attached to a management proxy circular required by section 247.

(3) No person may accept appointment or consent to be appointed as auditor of a corporation if he or she is replacing an auditor who has resigned, been removed or whose term of office has expired or is about to expire until he or she has requested and received from that auditor a written statement of the circumstances and the reasons why, in

that auditor's opinion, the auditor is to be replaced.

(4) Notwithstanding subsection (3), a person otherwise qualified may accept appointment or consent to be appointed as auditor of a corporation if, within fifteen days after making the request referred to in that subsection, he or she does not receive a reply.

(5) Unless subsection (4) applies, the appointment of a person who has not complied with subsection (3) is void.

Examination
by auditor
and report

270.(1) An auditor of a corporation must make the examination that is in the auditor's opinion necessary to enable the auditor to report in the prescribed manner on the financial statements required by this Act to be placed before the shareholders, except such financial statements or part thereof that relate to the immediately preceding financial year referred to in subparagraph (ii) of paragraph (a) of subsection (1) of section 254.

(2) Notwithstanding section 271, an auditor of a corporation may reasonably rely upon the report of an auditor of a body corporate or unincorporated business the accounts of which are included in whole or in part in the financial statements of the corporation.

(3) For the purposes of subsection (2), reasonableness is a question of fact.

(4) Subsection (2) applies whether or not the financial statements of the holding corporation reported upon by the auditor are in consolidated form.

Right to
information

271.(1) Upon the demand of an auditor of a corporation, the present or

former directors, officers, employees or agents of the corporation must furnish

- (a) such information and explanations; and
- (b) such access to records, documents, books, accounts and vouchers of the corporation or any of its subsidiaries,

as are, in the opinion of the auditor, necessary to enable the auditor to make the examination and report required under section 270 and that the directors, officers, employees or agents are reasonably able to furnish.

(2) Upon the demand of the auditor of a corporation, the directors of the corporation must

- (a) obtain from the present or former directors, officers, employees or agents of any subsidiary of the corporation the information and explanations that the directors, officers, employees and agents are reasonably able to furnish and that are, in the opinion of the auditor, necessary to enable the auditor to make the examinations and report required under section 270; and
- (b) furnish the information and explanations so obtained to the auditor.

Audit
committee

272.(1) Subject to subsection (2), a distributing corporation must, and any other corporation may, have an audit committee composed of not less than three directors of the corporation, a majority of whom are not officers or employees of the corporation or any of its affiliates.

(2) Upon the application of a corporation for authorization to dispense with an audit committee, the Registrar may, if the Registrar is satisfied that the shareholders will not be prejudiced by such an authorization, permit the corporation to dispense with an audit committee on such reasonable conditions as the Registrar thinks fit.

(3) An audit committee must review the financial statements of the corporation before the financial statements are approved under section 257.

(4) The auditor of a corporation is entitled to receive notice of every meeting of the audit committee and, at the expense of the corporation, to attend and be heard thereat; and, if so requested by a member of the audit committee, shall attend every meeting of the committee held during the term of office of the auditor.

(5) The auditor of a corporation or a member of the audit committee may call a meeting of the committee.

Errors in
financial
statements

273.(1) A director or officer of a corporation shall forthwith notify the audit committee and the auditor of any error or mis-statement of which the director or officer of a corporation becomes aware in a financial statement that the auditor or a former auditor has reported upon.

(2) If the auditor or former auditor of a corporation is notified or becomes aware of an error or mis-statement in a financial statement upon which the auditor or former auditor has reported, and if in his or her opinion the error or mis-statement is material, the auditor or former auditor shall inform each director accordingly.

(3) When under subsection (2) the auditor or former auditor informs the directors, or when the directors otherwise have knowledge of an error or misstatement in a financial statement, the directors shall

- (a) prepare and issue revised financial statements; or
- (b) otherwise inform the shareholders and, if the corporation is one that is required to comply with section 259, it shall inform the Registrar of the error or misstatement in the same manner as it informs the shareholders.

Auditor's
privilege
re defamat-
ion

274. An auditor is not liable to any person in an action for defamation based on any act done or not done or any statement made by the auditor in good faith in connection with any matter the auditor is authorized or required to do under this Act.

PART XIII

FUNDAMENTAL CHANGES

Amending
articles

275.(1) Subject to sections 280 and 281, the articles of a corporation may, by special resolution, be amended to

- (a) change its name;
- (b) change the place in which its registered office is situated;
- (c) add, change or remove any restriction upon the business that the corporation may carry on;

- (d) change any maximum number of shares that the corporation is authorized to issue;
- (e) create new classes of shares;
- (f) change the designation of all or any of its shares, and add, change or remove any rights, privileges, restrictions and conditions, including rights to accrued dividends, in respect of all or any of its shares, whether issued or un-issued;
- (g) change the shares of any class or series, whether issued or un-issued, into a different number of shares of the same class or series or into the same or a different number of shares of other classes or series;
- (h) divide a class of shares, whether issued or un-issued, into series and fix the number of shares in each series and the rights, privileges, restrictions and conditions thereof;
- (i) authorize the directors to divide any class of un-issued shares into series and fix the number of shares in each series and the rights, privileges, restrictions and conditions thereof;
- (j) authorize the directors to change the rights, privileges, restrictions and conditions attached to un-issued shares of any series;

- (k) revoke, diminish or enlarge any authority conferred under paragraphs (i) and (j);
- (l) increase or decrease the number of directors or the minimum or maximum number of directors, subject to sections 172 and 178;
- (m) add, change or remove restrictions on the transfer of shares; or
- (n) add, change or remove any other provision that is permitted by this Act to be set out in the articles.

(2) The directors of a corporation may, if authorized by the shareholders in the special resolution effecting an amendment under this section, revoke the resolution before it is acted upon without further approval of the shareholders.

(3) A provision in the articles that restricts in whole or in part the powers of the directors to manage the business and affairs of a corporation may not be amended except with the consent of all the shareholders.

(4) Where a corporation has a designating number as a name, the directors may amend the articles of the corporation to change its name to a name other than a number.

Constraints
on share
transfers

276.(1) Subject to sections 280 and 281, a corporation any of the issued shares of which are or were part of a distribution to the public may by special resolution amend its articles in accordance with the regulations to constrain the issue or transfer of its shares

- (a) to persons who are not resident Canadians; or
- (b) to enable the corporation or any of its affiliates to qualify under any law of Canada or a province referred to in the regulations
 - (i) to obtain a licence to carry on any business,
 - (ii) to become a publisher of a newspaper or periodical, or
 - (iii) to acquire shares of a financial intermediary as defined in the regulations.

(2) A corporation referred to in subsection (1) may by special resolution amend its articles to remove any constraint on the issue or transfer of its shares.

(3) The directors of a corporation may, if authorized by the shareholders in the special resolution effecting an amendment under subsection (1), revoke the resolution before it is acted upon without further approval of the shareholders.

Regulations
re con-
strained
share
corporations

277. The Lieutenant-Governor in Council may, with respect to a corporation that constrains the issue or transfer of its shares, make regulations prescribing

- (a) the disclosure required of the constraints in documents issued or published by the corporation;
- (b) the duties and powers of the directors to refuse to issue

or register transfers of shares in accordance with the articles of the corporation;

- (c) the limitations on voting rights of any shares held contrary to the articles of the corporation;
- (d) the powers of the directors to require disclosure of beneficial ownership of shares of the corporation and the right of the corporation, its directors, employees and agents to rely on that disclosure and the effects of relying thereon; and
- (e) the rights of any person owning shares of the corporation at the time of an amendment to its articles constraining share issues or transfers.

Validity
of acts

278. An issue or transfer of a share or an act of a corporation is valid notwithstanding any failure to comply with section 276 or the regulations under section 277.

Proposal
to amend
articles

279.(1) Subject to subsection (2), a director or a shareholder who is entitled to vote at an annual meeting of shareholders may in accordance with section 220 make a proposal to amend the articles.

(2) Notice of a meeting of shareholders at which a proposal to amend the articles is to be considered must set out the proposed amendment and, where applicable, must state that a dissenting shareholder is entitled to be paid the fair value of his or her shares in accordance with section 300; but failure

to make that statement does not invalidate an amendment.

Class vote
on proposal

280.(1) The holders of shares of a class or, subject to subsection (2), of a series are, unless the articles otherwise provide in the case of an amendment described in paragraph (a) or (b), entitled to vote separately, as a class or series, upon a proposal to amend the articles

- (a) to increase or decrease any maximum number of authorized shares of that class, or to increase any maximum number of authorized shares of a class having rights or privileges equal or superior to the shares of that class;
- (b) to effect an exchange, reclassification or cancellation of all or part of the shares of that class;
- (c) to add, change or remove the rights, privileges, restrictions or conditions attached to the shares of that class and, without limiting the generality of the foregoing,
 - (i) to remove or change prejudicially rights to accrued dividends or rights to cumulative dividends,
 - (ii) to add, remove or change prejudicially redemption rights,
 - (iii) to reduce or remove a dividend preference or a liquidation preference, or

- (iv) to add, remove or change prejudicially conversion privileges, options, voting, transfer or preemptive rights, or rights to acquire securities of a corporation, or sinking fund provisions;
- (d) to increase the rights or privileges of any class of shares having rights or privileges equal or superior to the shares of that class;
- (e) to create a new class of shares equal or superior to the shares of that class;
- (f) to make any class of shares having rights or privileges inferior to the shares of that class equal or superior to shares of that class;
- (g) to effect an exchange or to create a right of exchange of all or part of the shares of another class into the shares of that class; or
- (h) to constrain the issue or transfer of the shares of that class or extend or remove the constraint.

(2) The holders of a series of shares of a class are entitled to vote separately as a series under subsection (1) only if the series is affected by an amendment in a manner different from other shares of the same class.

(3) A proposed amendment to the articles referred to in subsection (1) is adopted when the holders of the shares of each class or series entitled to vote separately thereon as a class or

series have approved the amendment by a special resolution.

Delivery
of articles

281.(1) Subject to any revocation under subsection (2) of section 275 or subsection (3) of section 276, after an amendment has been adopted under section 275, 276 or 280, articles of amendment in prescribed form must be sent to the Registrar.

(2) If an amendment effects or requires a reduction of stated capital, subsections (3) and (4) of section 67 apply.

Certificate
of amend-
ment

282.(1) Upon receipt of articles of amendment, the Registrar must issue a certificate of amendment in accordance with section 388.

(2) An amendment becomes effective on the date shown in the certificate of amendment and the articles are amended accordingly.

(3) No amendment to the articles affects an existing cause of action or claim or liability to prosecution in favour of or against the corporation or its directors or officers, or any civil, criminal or administrative action or proceeding to which a corporation or its directors or officers is a party.

Restated
articles

283.(1) The directors may at any time, and must when reasonably so directed by the Registrar, restate the articles of incorporation as amended.

(2) Restated articles of incorporation in prescribed form must be sent to the Registrar.

(3) Upon receipt of restated articles of incorporation, the Registrar must issue a restated certificate of

incorporation in accordance with section 388.

(4) Restated articles of incorporation are effective on the date shown in the restated certificate of incorporation and supersede the original articles of incorporation and all amendments thereto.

Corporate
amalgamations

284. Two or more corporations, including holding and subsidiary corporations, may amalgamate and continue as one corporation.

Amalgamation
agreement

285.(1) Each corporation proposing to amalgamate must enter into an agreement setting out the terms and means of effecting the amalgamation and, in particular, setting out

- (a) the provisions that are required to be included in articles of incorporation under section 15;
- (b) the name and address of each proposed director of the amalgamated corporation;
- (c) the manner in which the shares of each amalgamating corporation are to be converted into shares or other securities of the amalgamated corporation;
- (d) if any shares of an amalgamating corporation are not to be converted into securities of the amalgamated corporation, the amount of money or securities of any body corporate that the holders of those shares are to receive instead of securities of the amalgamated corporation;

- (e) the manner of payment of money instead of the issue of fractional shares of the amalgamated corporation of any other body corporate the securities of which are to be received in the amalgamation;
- (f) whether the by-laws of the amalgamated corporation are to be those of one of the amalgamation corporations and, if not, a copy of the proposed by-laws; and
- (g) details of any arrangements necessary to perfect the amalgamation and to provide for the subsequent management and operation of the amalgamated corporation.

(2) If shares of one of the amalgamating corporations are held by or on behalf of another of the amalgamating corporations, the amalgamation agreement must provide for the cancellation of those shares when the amalgamation becomes effective without any repayment of capital in respect thereof, and no provision may be made in the agreement for the conversion of those shares into shares of the amalgamated corporation.

Shareholder
approval

286.(1) The directors of each amalgamating corporation must submit the amalgamation agreement for approval to a meeting of the holders of shares of the amalgamating corporation of which they are directors and, subject to subsection (4), to the holders of each class or series of shares.

(2) A notice of a meeting of shareholders complying with section 217 must be sent in accordance with that section to each shareholder of each

amalgamating corporation, and the notice

- (a) must include or be accompanied by a copy or summary of the amalgamation agreement; and
- (b) must state that a dissenting shareholder is entitled to be paid the fair value of his or her shares in accordance with section 300; but failure to make that statement does not invalidate an amalgamation.

(3) The holders of shares of a class or series of shares of an amalgamating corporation are entitled to vote separately as a class or series in respect of an amalgamation when the amalgamation agreement contains a provision that, if contained in a proposed amendment to the articles, would entitle those holders to vote as a class or series under section 280.

(4) An amalgamation agreement is adopted when the shareholders of each amalgamating corporation have approved of the amalgamation by special resolutions of each class or series of the shareholders entitled to vote thereon.

(5) An amalgamation agreement may provide that at any time before the issue of a certificate of amalgamation the agreement may be terminated by the directors of an amalgamating corporation, notwithstanding approval of the agreement by the shareholders of all or any of the amalgamating corporations.

Vertical
short-form
amalgamation

287. A holding corporation and one or more of its wholly-owned subsidiary corporations may amalgamate and continue as one corporation without complying with sections 285 and 286, if

- (a) the amalgamation is approved by a resolution of the directors of each amalgamating corporation; and
- (b) the resolutions provide that
 - (i) the shares of each amalgamating subsidiary corporation will be cancelled without any repayment of capital in respect thereof,
 - (ii) the articles of amalgamation will be the same as the articles of incorporation of the amalgamating holding corporation, and
 - (iii) no securities will be issued by the amalgamated corporation in connection with the amalgamation.

Horizontal
short-form
amalgamation

288. Two or more wholly-owned subsidiary corporations of the same holding body corporate may amalgamate and continue as one corporation without complying with sections 285 and 286, if

- (a) the amalgamation is approved by a resolution of the directors of each amalgamating corporation; and
- (b) the resolutions provide that
 - (i) the shares of all but one of the amalgamating subsidiary corporations will be cancelled without any repayment of capital in respect thereof,
 - (ii) the articles of amalgamation will be the same

as the articles of incorporation of the amalgamating subsidiary corporations whose shares are not cancelled, and

- (iii) the stated capital of the amalgamating subsidiary corporations whose shares are cancelled will be added to the stated capital of the amalgamating subsidiary corporation whose shares are not cancelled.

Articles of
amalgamation

289.(1) Subject to subsection (6) of section 286, after an amalgamation has been adopted under section 286 or approved under section 287 or 288, articles of amalgamation in prescribed form must be sent to the Registrar together with the documents required by sections 37 and 171.

(2) There must be attached to the articles of amalgamation a statutory declaration of a director or an officer of each amalgamating corporation that establishes to the satisfaction of the Registrar that

(a) there are reasonable grounds for believing that

- (i) each amalgamating corporation is and the amalgamated corporation will be able to pay its liabilities as they become due, and

- (ii) the realizable value of the amalgamated corporation's assets will not be less than the aggregate of its liabilities and

stated capital of all classes; and

- (b) there are reasonable grounds for believing that
 - (i) no creditor will be prejudiced by the amalgamation, or
 - (ii) adequate notice has been given to all known creditors of the amalgamating corporations and no creditor objects to the amalgamation otherwise than on grounds that are frivolous or vexatious.
- (3) For the purposes of subsection (2), adequate notice is given if
 - (a) a notice in writing is sent to each known creditor having a claim against the corporation that exceeds one thousand dollars;
 - (b) a notice is published once in a newspaper published or distributed in the place where the corporation has its registered office and reasonable notice thereof is given in each province where the corporation carries on business; and
 - (c) each notice states that the corporation intends to amalgamate with one or more specified corporations in accordance with this Act and that a creditor of the corporation may object to the amalgamation within thirty days from the date of the notice.

Certificate
of amal-
gamation

290.(1) Upon receipt of articles of amalgamation, the Registrar must issue a certificate of amalgamation in accordance with section 388.

(2) On the date shown in a certificate of amalgamation,

- (a) the amalgamation of the amalgamating corporations and their continuance as one corporation become effective;
- (b) the property of each amalgamating corporation continues to be the property of the amalgamated corporation;
- (c) the amalgamated corporation continues to be liable for the obligations of each amalgamating corporation;
- (d) an existing cause of action, claim or liability to prosecution is unaffected;
- (e) a civil, criminal or administrative action or proceeding pending by or against an amalgamating corporation may be continued to be prosecuted by or against the amalgamated corporation;
- (f) a conviction against, or ruling, order or judgment in favour of or against, an amalgamating corporation may be enforced by or against the amalgamated corporation; and
- (g) the articles of amalgamation are the articles of incorporation of the amalgamated corporation and, except for the purposes of subsection (1) of section 167, the certificate

of amalgamation is the certificate of incorporation of the amalgamated corporation.

Continuing
imported
corporation

291.(1) A body corporate that was incorporated otherwise than by or under the laws of Newfoundland or of the Province of Newfoundland, may, if so authorized by the laws of the jurisdiction where it is then incorporated, apply to the Registrar for a certificate of continuance.

(2) Articles of continuance may, without so stating in the articles, effect any amendment to the constating instruments, statutory or other, of the body corporate that applies for continuance under subsection (1), if the amendment

(a) is authorized in accordance with the law applicable to the body corporate before continuance; and

(b) is an amendment a corporation incorporated under this Act may make to its articles.

(3) Articles of continuance in prescribed form must be sent to the Registrar together with the documents required by sections 37 and 171.

Certificate
of continu-
ance

292.(1) Upon receipt of articles of continuance, the Registrar may issue a certificate of continuance in accordance with section 388.

(2) On the date shown on the certificate of continuance,

(a) the body corporate becomes a corporation to which this Act applies as if it had been incorporated under this Act;

- (b) the articles of continuance are the articles of incorporation of the continued corporation; and
- (c) except for the purposes of subsection (1) of section 167, the certificate of continuance is the certificate of incorporation of the continued corporation.

(3) The Registrar must forthwith send a copy of the certificate of continuance to the appropriate official or public body in the jurisdiction in which continuance under this Act was authorized.

Rights
preserved
on continu-
ation

293.(1) When a body corporate is continued as a corporation under this Act,

- (a) the property of the body corporate continues to be the property of the corporation;
- (b) the corporation continues to be liable for the obligations of the body corporate;
- (c) an existing cause of action, claim or liability to prosecution is unaffected;
- (d) a civil, criminal or administrative action or proceeding pending by or against the body corporate may be continued to be prosecuted by or against the corporation; and
- (e) a conviction against, or ruling, order or judgment in favour of or against, the body corporate may be enforced by or against the corporation.

(2) When the Registrar determines, on the application of a body corporate, that it is not practicable to change a reference to the nominal or par value of shares or a class or series that the body corporate was authorized to issue before it was continued as a corporation under this Act the Registrar may, notwithstanding subsection (1) of section 48, permit the corporation to continue to refer in its articles to those shares, whether issued or un-issued, as shares having a nominal or par value.

(3) A corporation must set out in its articles the maximum number of shares of a class or series referred to in subsection (2) and it may not amend its articles to increase that maximum number of shares or to change the nominal or par value of the shares.

Shares on
continuation

294.(1) Subject to section 86, a share of a body corporate issued before the body corporate was continued under this Act is presumed to have been issued in compliance with this Act and with the provisions of the articles of continuance irrespective of whether the share is fully paid and irrespective of any designation, rights, privileges, restrictions or conditions set out on or referred to in the certificate representing the share; and continuance under this Act does not deprive a holder of any right or privilege that the holder claims under, or relieve that holder of any liability in respect of, an issued share.

(2) Where a corporation that is continued under this Act had, before it was so continued, issued a share certificate in registered form that is convertible to bearer form, the corporation may, if a holder of such a share certificate exercises the conversion privilege attached thereto, issue a share

certificate in bearer form for the same number of shares to the holder.

(3) For the purposes of this section, "share" includes an instrument referred to in subsection (1) of section 58, a share warrant or a like instrument.

Exporting
corporation

295.(1) Subject to section 296, a corporation may,

- (a) if it is authorized by the shareholders in accordance with this section, and
- (b) if it establishes to the satisfaction of the Registrar that its proposed continuance in another jurisdiction will not adversely affect creditors or shareholders of the corporation,

apply to the appropriate official or public body of another jurisdiction requesting that the corporation be continued as if it had been incorporated under the laws of that other jurisdiction.

(2) A notice of a meeting of shareholders complying with section 218 must be sent in accordance with that section to each shareholder and must state that a dissenting shareholder is entitled to be paid the fair value of his or her shares in accordance with section 300; but failure to make that statement does not invalidate a discontinuance under this Act.

(3) An application for continuance becomes authorized when the shareholders voting thereon have approved of the continuance by a special resolution.

(4) The directors of a corporation may, if authorized by the shareholders at the time of approving an application for continuance under this section, abandon the application without further approval of the shareholders.

Prior
approval
required

296.(1) No corporation may apply for continuance in another jurisdiction without the prior approval of the Registrar.

(2) A corporation may not be continued as a body corporate under the laws of another jurisdiction unless those laws provide in effect that

- (a) the property of the corporation continues to be the property of the body corporate;
- (b) the body corporate continues to be liable for the obligations of the corporation;
- (c) an existing cause of action, claim or liability to prosecution is unaffected;
- (d) a civil, criminal or administrative action or proceeding pending by or against the corporation may be continued to be prosecuted by or against the body corporate; and
- (e) a conviction against, or ruling, order or judgment in favour of or against, the corporation may be enforced by or against the body corporate.

Certificate
of discontin-
uance

297.(1) Upon receipt of notice satisfactory to the Registrar that a corporation that has made an application under section 295 has been continued under the laws of another jurisdiction,

the Registrar must file the notice and issue a certificate of discontinuance in accordance with section 388.

(2) This Act ceases to apply to the corporation (as such) in respect of which a certificate of discontinuance is issued under subsection (1) on the date shown in the certificate of discontinuance.

(3) The notice described in subsection (1) is, for the purposes of section 388, articles that conform to law.

Directors'
borrowing
powers

298.(1) Unless the articles or by-laws of, or a unanimous shareholder agreement relating to, a corporation otherwise provide, the articles of a corporation are presumed to provide that the directors of the corporation may, without authorization of the shareholders,

- (a) borrow money upon the credit of the corporation;
- (b) issue, re-issue, sell or pledge debt obligations of the corporation;
- (c) subject to section 77, give a guarantee on behalf of the corporation to secure performance of an obligation of any person; and
- (d) mortgage, charge, pledge or otherwise create a security interest in all or any property of the corporation, owned or subsequently acquired, to secure any debt obligation of the corporation.

(2) Notwithstanding subsection (3) of section 185 and paragraph (a) of

section 198, unless the articles or by-laws of, or an unanimous shareholder agreement relating to, a corporation otherwise provide, the directors may by resolution delegate the powers mentioned in subsection (1) to a director, a committee of directors, or an officer.

Extra-
ordinary
sale

299.(1) A sale, lease or exchange of all or substantially all the property of a corporation other than in the ordinary course of business of the corporation requires the approval of the shareholders in accordance with this section.

(2) A notice of a meeting of shareholders complying with section 217 must be sent in accordance with that section to each shareholder and must

- (a) include or be accompanied by a copy or summary of the agreement of sale, lease or exchange; and
- (b) state that a dissenting shareholder is entitled to be paid the fair value of his or her shares in accordance with section 300, but failure to make that statement does not invalidate a sale, lease or exchange referred to in subsection (1).

(3) At the meeting referred to in subsection (2), the shareholders may authorize the sale, lease or exchange and may fix or authorize the directors to fix any of the terms and conditions thereof.

(4) The holders of shares of a class or series of shares of the corporation are entitled to vote separately as a class or series in respect of a sale, lease or exchange referred to in sub-

section (1) only if the class or series is affected by the sale, lease or exchange in a manner different from the shares of another class or series.

(5) A sale, lease or exchange referred to in subsection (1) is adopted when the holders of each class or series entitled to vote thereon have approved of the sale, lease or exchange by a special resolution.

(6) The directors of a corporation may, if authorized by the shareholders approving a proposed sale, lease or exchange, and subject to the rights of third parties, abandon the sale, lease or exchange without further approval of the shareholders.

Shareholders right to dissent

300.(1) Subject to sections 310 and 366 a holder of shares of any class of a corporation may dissent if the corporation resolves to

- (a) amend its articles under section 275 or 276 to add, change or remove any provisions restricting or constraining the issue or transfer of shares of that class;
- (b) amend its articles under section 275 to add, change or remove any restriction upon the business or businesses that the corporation may carry on;
- (c) amalgamate with another corporation, otherwise than under section 287 or 288;
- (d) be continued under the laws of another jurisdiction under section 295; or

(e) sell, lease or exchange all or substantially all its property under section 299.

(2) Subject to sections 310 and 366, a holder of shares of any class of a corporation may dissent if the corporation is subject to an order of the court under section 311 permitting the shareholders to dissent.

(3) The articles of a corporation may provide that a holder of any class or series of shares of a corporation (except a holder of shares of a distributing corporation) who is entitled to vote under section 280 may dissent if the corporation resolves to amend its articles in a manner described in that section.

(4) In addition to any other right a shareholder has, but subject to section 309, a shareholder who complies with this section is entitled when the action approved by the resolution from which the shareholder dissents, or an order made under section 311, becomes effective, to be paid by the corporation the fair value of the shares held by the shareholder in respect of which the shareholder dissents, which is to be determined as of the close of business on the day before the resolution was adopted or the order was made.

(5) A dissenting shareholder may not claim under this section except only with respect to all the shares of a class held by the dissenting shareholder on behalf of any one beneficial owner and registered in the name of the dissenting shareholder.

(6) A dissenting shareholder must send to the corporation, at or before any meeting of shareholders at which a resolution referred to in subsection (1)

or (3) is to be voted on, a written objection to the resolution, unless the corporation did not give notice to the shareholder of the purpose of the meeting and of his or her right to dissent.

(7) The corporation must, within ten days after the shareholders adopt the resolution, send to each shareholder who has filed the objection referred to in subsection (6) notice that the resolution has been adopted, but such notice is not required to be sent to any shareholder who voted for the resolution or who has withdrawn his objection.

Demand
payment by
dissenter

301.(1) A dissenting shareholder must, within twenty days after the dissenting shareholder receives a notice under subsection (7) of section 300 or, if the shareholder does not receive that notice, within twenty days after the dissenting shareholder learns that a resolution under that subsection has been adopted, send to the corporation a written notice containing

- (a) the dissenting shareholder's name and address;
- (b) the number and class of shares in respect of which the dissenting shareholder dissents; and
- (c) a demand for payment of the fair value of the shares.

(2) A dissenting shareholder must, within thirty days after sending a notice under subsection (1), send the certificates representing the shares in respect of which he or she dissents to the corporation or its transfer agent.

(3) A dissenting shareholder who fails to comply with subsection (2) has

no right to make a claim under this section.

(4) A corporation or its transfer agent must endorse on any share certificate received under subsection (2) a notice that the holder is a dissenting shareholder under this section and forthwith return the share certificates to the dissenting shareholder.

Suspension
of rights

302. After sending a notice under section 301, a dissenting shareholder ceases to have any rights as a shareholder (other than the right to be paid the fair value of his or her shares as determined under this section) except where

- (a) the dissenting shareholder withdraws his or her notice before the corporation makes an offer under section 303;
- (b) the corporation fails to make an offer in accordance with section 303 and the dissenting shareholder withdraws his or her notice; or
- (c) the directors revoke a resolution to amend the articles under subsection (2) of section 275 or subsection (3) of section 276, terminate an amalgamation agreement under subsection (6) of section 286 or an application for continuance under subsection (5) of section 295, or abandon a sale, lease or exchange under subsection (7) of section 299,

in which case his or her rights as a shareholder are re-instated as of the date the dissenting shareholder sent the notice mentioned in section 301.

Offer
to pay

303.(1) A corporation must, not later than seven days after the later of the day on which the action approved by the resolution is effective or the day the corporation received the notice referred to in section 301, send to each dissenting shareholder who has sent such a notice

- (a) a written offer to pay for his or her shares in an amount considered by the directors of the corporation to be the fair value thereof, accompanied by a statement showing how the fair value was determined; or
- (b) if section 309 applies, a notification that it is unable lawfully to pay dissenting shareholders for their shares.

(2) Every offer made under subsection (1) for shares of the same class or series must be on the same terms.

(3) Subject to section 309, a corporation must pay for the shares of a dissenting shareholder within ten days after an offer made under subsection (1) has been accepted, but that offer lapses if the corporation does not receive an acceptance thereof within thirty days after the offer has been made.

Application
to court

304.(1) If a corporation fails to make an offer under subsection (1) of section 303 or a dissenting shareholder fails to accept an offer, the corporation may, within fifty days after the action approved by the resolution is effective, apply to a court to fix a fair value for the shares of any dissenting shareholder.

(2) If a corporation fails to apply to a court under subsection (1), a

dissenting shareholder may apply to a court for the same purpose within a further period of twenty days.

Procedure

305.(1) An application under section 304 must be made to a court having jurisdiction in the place where the corporation has its registered office or in the province where the dissenting shareholder resides if the corporation carries on business in that province.

(2) A dissenting shareholder is not required to give security for costs in an application made under section 304.

(3) Upon an application to a court under section 304,

(a) all dissenting shareholders whose shares have not been purchased by the corporation are to be joined as parties and are bound by the decision of the court; and

(b) the corporation must notify each affected dissenting shareholder of the date, place and consequences of the application and of his or her right to appear and be heard in person or by counsel.

Powers
of court

306.(1) Upon an application to a court under section 304, the court may determine whether any other person is a dissenting shareholder who should be joined as a party, and the court must then fix a fair value for the shares of all dissenting shareholders.

(2) A court may appoint one or more appraisers to assist the court to fix a fair value for the shares of the dissenting shareholders.

(3) The final order of a court must be made against the corporation in favour of each dissenting shareholder and for the amount of his or her shares as fixed by the court.

Interest

307. A court may allow a reasonable rate of interest on the amount payable to each dissenting shareholder from the date the action approved by the resolution is effective until the date of payment.

Notice

308.(1) If section 309 applies, the corporation must, within ten days after the pronouncement of an order under section 306, notify each dissenting shareholder that it is unable lawfully to pay dissenting shareholders for their shares.

(2) If section 309 applies, a dissenting shareholder, by written notice delivered to the corporation within thirty days after receiving a notice under subsection (1), may,

(a) withdraw his or her notice of dissent, in which case the corporation consents to the withdrawal and the shareholder is re-instated to his or her full rights as a shareholder; or

(b) retain a status as a claimant against the corporation, to be paid as soon as the corporation is lawfully able to do so or, in a liquidation, to be ranked subordinate to the rights of creditors of the corporation but in priority to its shareholders.

Prohibition
against

309. A corporation shall not make a payment to a dissenting shareholder

- payment under section 303 if there are reasonable grounds for believing that
- (a) the corporation is or would after the payment be unable to pay its liabilities as they become due; or
 - (b) the realizable value of the corporation's assets would thereby be less than the aggregate of its liabilities.
- Court order-
ed re-organ-
ization 310.(1) In this section, "re-organization" means a court order made under
- (a) section 366;
 - (b) the Bankruptcy Act (Canada), approving a proposal; or
 - (c) any other Act of the Parliament of Canada or an Act of the Legislature that affects the rights among the corporation, its shareholders and creditors.
- (2) If a corporation is subject to an order referred to in subsection (1), its articles may be amended by the order to effect any change that might lawfully be made by an amendment under section 275.
- (3) If a court makes an order referred to in subsection (1), the court may also
- (a) authorize the issue of debt obligations of the corporation, whether or not convertible into shares of any class or having attached any rights or options to acquire shares of any class, and fix the terms thereof; and

(b) appoint directors in place of or in addition to all or any of the directors then in office.

(4) After an order referred to in subsection (1) has been made, articles of re-organization in prescribed form must be sent to the Registrar together with the documents required by sections 37 and 179, if applicable.

(5) Upon receipt of articles of re-organization, the Registrar must issue a certificate of amendment in accordance with section 388.

(6) A re-organization becomes effective on the date shown in the certificate of amendment and the articles of incorporation are amended accordingly.

(7) A shareholder is not entitled to dissent under section 300 if an amendment to the articles of incorporation is effected under this section.

Arrangements

311.(1) In this section, "arrangement" includes

- (a) an amendment to the articles of a corporation;
- (b) an amalgamation of two or more corporations;
- (c) the continuance of a corporation under the laws of another jurisdiction;
- (d) a division of the business carried on by a corporation;
- (e) a transfer of all or substantially all the property of a corporation to another body corporate in exchange for

property, money or securities of the body corporate;

(f) an exchange of securities of a corporation held by security holders for property, money or other securities of the corporation or property, money or securities of another body corporate that is not a take-over bid within the meaning of Part XIV:

(g) a liquidation and dissolution of a corporation; and

(h) any combination of the foregoing.

(2) For the purposes of this section, a corporation is insolvent when

(a) it is unable to pay its liabilities as they become due; or

(b) the realizable value of the assets of the corporation are less than the aggregate of its liabilities and stated capital of all classes.

(3) Where it is not practicable for a corporation that is not insolvent to effect a fundamental change in the nature of an arrangement under any other provision of this Act, the corporation may apply to a court for an approval of arrangement proposed by the corporation.

(4) In connection with an application under this section, the court may make an interim or final order it thinks fit including, without limiting the generality of the foregoing,

(a) an order determining the notice to be given to any

interested person or dispensing with notice to any person other than the registrar;

- (b) an order appointing counsel, at the expense of the corporation, to represent the interests of the shareholders;
- (c) an order requiring a corporation to call, hold and conduct a meeting of holders of securities or options or rights to acquire securities in such manner as the court directs;
- (d) an order permitting a shareholder to dissent under section 300;
- (e) an order approving an arrangement as proposed by the corporation or as amended in any manner the court may direct.

(5) An applicant under this section must give the Registrar notice of the application and the Registrar is entitled to appear and be heard in person or by counsel.

(6) After an order referred to in paragraph (d) of subsection (4) has been made, articles of arrangement in prescribed form must be sent to the Registrar together with the documents required by sections 37 and 179, if applicable.

(7) Upon receipt of articles of arrangement, the Registrar must issue a certificate of amendment in accordance with section 388.

(8) An arrangement becomes effective on the date shown in the certificate of amendment.

PART XIV

DISSENTING OFFEREES

Definitions
for Part

312. In this Part

- (a) "dissenting offeree" means, when a take-over bid is made for all the shares of a class of shares, a holder of a share of that class who does not accept the take-over bid and includes the subsequent holder of that share who acquires it from the first mentioned holder;
- (b) "offer" includes an invitation to make an offer;
- (c) "offeree" means a person to whom a take-over bid is made;
- (d) "offeree-corporation" means a corporation whose shares are the object of a take-over bid;
- (e) "offeror" means a person, other than an agent, who make a take-over bid, and includes two or more persons who, directly or indirectly
 - (i) make take-over bids jointly or in concert, or
 - (ii) intend to exercise jointly or in concert voting rights attached to shares for which a take-over bid is made;
- (f) "share" means a share with or without voting rights and includes

(i) a security currently convertible into such a share, and

(ii) currently exercisable options and rights to acquire a share or such a convertible security; and

(g) "take-over bid" means an offer made by an offeror to shareholders to acquire all the shares of any class of issued shares of an offeree-corporation and includes every offer by an issuer to repurchase its own shares.

Offeror's
right to
acquire
shares

313. If, within one hundred and twenty days after the date of a take-over bid, the bid is accepted by the holders of not less than ninety per cent of the shares of any class of shares to which the take-over bid relates (other than shares held at the date of the take-over bid by or on behalf of the offeror or an affiliate or associate of the offeror), the offeror is entitled, upon complying with this Part, to acquire the shares held by the dissenting offerees.

Notice to
dissenting
offeree

314. An offeror may acquire shares held by a dissenting offeree by sending by registered mail within sixty days after the date of termination of the take-over bid and in any event within one hundred and eighty days after the date of the take-over bid, an offeror's notice to each dissenting offeree and to the Registrar stating that

(a) the offerees holding more than ninety per cent of the shares to which the bid relates accepted the take-over bid;

- (b) the offeror is bound to take up and pay for or has taken up and paid for the shares of the offerees who accepted the take-over bid;
- (c) a dissenting offeree is required to elect
 - (i) to transfer his or her shares to the offeror on the terms on which the offeror acquired the shares of the offerees who accepted the take-over bid, or
 - (ii) to demand payment of the fair value of his or her shares in accordance with sections 320 to 325 by notifying the offeror within twenty days after the dissenting offeree receives the offeror's notice;
- (d) a dissenting offeree who does not notify the offeror in accordance with subparagraph (ii) of paragraph (c) is presumed to have elected to transfer his or her shares to the offeror on the same terms that the offeror acquired the shares from the offerees who accepted the take-over bid; and
- (e) a dissenting offeree must send his or her shares to which the take-over bid relates to the offeree-corporation within twenty days after he or she receives the offeror's notice.

- Notice of
of adverse
claim 315. Concurrently with sending the offeror's notice under section 314, the offeror must send to the offeree-corporation a notice of adverse claim in accordance with section 133 with respect to each share held by a dissenting offeree.
- Delivery
of share
certificate 316. A dissenting offeree to whom an offeror's notice is sent under section 314 must, within twenty days after the dissenting offeree receives that notice, send his or her share certificates of the class of shares to which the take-over bid relates to the offeree-corporation.
- Payment for
shares 317. Within twenty days after the offeror sends an offeror's notice under section 314, the offeror must pay or transfer to the offeree-corporation the amount of money or other consideration that the offeror would have had to pay or transfer to a dissenting offeree if the dissenting offeree had elected to accept the take-over bid under subparagraph (i) of paragraph (c) of section 307.
- Money in
trust 318. The offeree-corporation holds in trust for the dissenting shareholders the money or other consideration it receives under section 317; and the offeree-corporation must deposit the money in a separate account in a bank or other body corporate any of whose deposits are insured by the Canada Deposit Insurance Corporation, and must place the other consideration in the custody of a bank or that other body corporate.
- Duty of
offeree-
corporation 319. Within thirty days after the offeror sends an offeror's notice under section 314, the offeree-corporation must
- (a) issue the offeror a share certificate in respect of the

shares that were held by dissenting offerees;

- (b) give to each dissenting offeree who elects to accept the take-over bid terms under subparagraph (i) of paragraph (c) of section 314 and who sends his or her share certificate as required under section 316 the money or other consideration to which the dissenting offeree is entitled, disregarding fractional shares, which may be paid for in money; and

- (c) send to each dissenting shareholder who has not sent his or her share certificates as required under section 316 a notice stating that
 - (i) the dissenting shareholder's shares have been cancelled,

 - (ii) the offeree-corporation or some designated person holds in trust for the dissenting shareholder the money or other consideration to which the dissenting shareholder is entitled as payment for or in exchange for his or her shares, and

 - (iii) the offeree-corporation will, subject to sections 320 to 325, send that money or other consideration to the dissenting shareholder forthwith after receiving his or her shares.

Fixing of fair values 320.(1) If a dissenting offeree has elected to demand payment of the fair value of his or her shares under subparagraph (ii) of paragraph (c) of section 314, the offeror may, within twenty days after it has paid the money or transferred the other consideration under section 317, apply to a court to fix the fair value of the shares of that dissenting offeree.

(2) If an offeror fails to apply to a court under subsection (1), a dissenting offeree may apply to a court for the same purpose within a further period of twenty days.

(3) If no application is made to a court under subsection (2) within the time provided for in that subsection, a dissenting offeree thereby elects to transfer his or her shares to the offeror on the same terms that the offeror acquired the shares from the offerees who accepted the take-over bid.

Venue 321. An application under subsection (1) or (2) of section 320 must be made to a court having jurisdiction in the place where the corporation has its registered office or in the province where the dissenting offeree resides if the corporation carries on business in that province.

No security for losses 322. A dissenting offeree is not required to give security for costs in an application made under section 320.

Dissenting offerees as parties 323. Upon an application under section 320

(a) all dissenting offerees referred to in subparagraph (ii) of paragraph (c) of section 314 whose shares have not been acquired by the offeror

are to be joined as parties and are bound by the decision of the court; and

- (b) the offeror must notify each affected dissenting offeree of the date, place and consequences of the application and of his or her right to appear and be heard in person or by counsel.

Powers of
court

324.(1) Upon an application to a court under section 320, the court may determine whether any other person is a dissenting offeree who should be joined as a party, and the court must then fix a fair value for the shares of all dissenting offerees.

(2) A court may appoint one or more appraisers to assist the court to fix a fair value for the shares of a dissenting offeree.

(3) The final order of the court must be made against the offeror in favour of each dissenting offeree and for the amount of his or her shares as fixed by the court.

Additional
powers of
court

325. In connection with proceedings under this Part, a court may make any order it thinks fit and, without limiting the generality of the foregoing, it may

- (a) fix the amount of money or other consideration that is required to be held in trust under section 318;
- (b) order that the money or other consideration be held in trust by a person other than the offeree-corporation;

- (c) allow a reasonable rate of interest on the amount payable to each dissenting offeree from the date the dissenting offeree sends or delivers the dissenting offeree's share certificates under section 316 until the date of payment; or
- (d) order that any money payable to a shareholder who cannot be found be paid to the Minister of Finance and subsection (3) of section 352 applies in respect thereof.

PART XV

LIQUIDATION AND DISSOLUTION

Application
of Part

326.(1) This Part does not apply to a corporation that is insolvent within the meaning of the Bankruptcy Act (Canada) or that is a bankrupt within the meaning of that Act.

(2) Any proceedings taken under this Part to dissolve or to liquidate and dissolve a corporation must be stayed if the corporation is at any time found, in a proceeding under the Bankruptcy Act (Canada), to be insolvent within the meaning of that Act.

Revival
application

327.(1) Where a corporation is dissolved under this Part or section 414, any interested person may apply to the Registrar to have the corporation revived.

(2) Articles of revival in prescribed form must be sent to the Registrar.

(3) Upon receipt of articles of revival, the Registrar must issue a

certificate of revival in accordance with section 388.

(4) A corporation is revived on the date shown on the certificate of revival, and thereafter the corporation, subject to such reasonable terms as may be imposed by the Registrar and to the rights acquired by any person after its dissolution, has all the rights and privileges and is liable for the obligations that it would have had if it had not been dissolved.

Dissolution
if no shares

328. A corporation that has not issued any shares may be dissolved at any time by resolution of all the directors.

Dissolution
if no prop-
erty

329. A corporation that has no property and no liabilities may be dissolved by special resolution of the shareholders or, where it has issued more than one class of shares, by special resolutions of the holders of each class whether or not they are otherwise entitled to vote.

Dissolution
where proper-
ty disposed
of

330. A corporation that has property or liabilities or both may be dissolved by special resolution of the shareholders or, where it has issued more than one class of shares, by special resolutions of the holders of each class whether or not they are otherwise entitled to vote, if

- (a) by the special resolution or resolutions the shareholders authorize the directors to cause the corporation to distribute any property and discharge any liabilities; and
- (b) the corporation has distributed any property and discharged any liabilities before it sends articles of dissolution

to the Registrar pursuant to section 331.

Articles of
dissolution
and effect

331.(1) Articles of dissolution in prescribed form must be sent to the Registrar in respect of a corporation described in section 328, 329 or 330.

(2) Upon receipt of articles of dissolution, the Registrar must issue a certificate of dissolution in accordance with section 388.

(3) The corporation ceases to exist on the date shown in the certificate of dissolution.

Proposing
liquidation
and disso-
lution

332.(1) The directors of a corporation may propose, or in accordance with section 220 a shareholder who is entitled to vote at an annual meeting of the corporation may make a proposal for, the voluntary liquidation of the corporation.

(2) Notice of any meeting of shareholders at which voluntary liquidation and dissolution is to be proposed must set out the terms thereof.

(3) A corporation may liquidate and dissolve by special resolution of the shareholders or, where the corporation has issued more than one class of shares, by special resolutions of the holders of each class whether or not they are otherwise entitled to vote.

Certificate
of intent
to dissolve

333.(1) A statement of intent to dissolve in prescribed form must be sent to the Registrar.

(2) Upon receipt of a statement of intent to dissolve, the Registrar must issue a certificate of intent to dissolve in accordance with section 388.

(3) Upon issue of a certificate of intent to dissolve, the corporation shall cease to carry on business except to the extent necessary for the liquidation, but its corporate existence continues until the Registrar issues a certificate of dissolution.

(4) After issue of a certificate of intent to dissolve, the corporation shall

- (a) immediately cause notice thereof to be sent to each known creditor of the corporation;
- (b) forthwith publish notice thereof in the Gazette and once in a newspaper published or distributed in the place where the corporation has its registered office and take reasonable steps to give notice thereof in every jurisdiction where the corporation was carrying on business at the time it sent the statement of intent to dissolve to the Registrar;
- (c) proceed to collect its property, to dispose of properties that are not to be distributed in kind to its shareholders, to discharge all its obligations and to do all other acts required to liquidate its business; and
- (d) after giving the notice required under paragraphs (a) and (b) and adequately providing for the payment or discharge of all its obligations, distribute its remaining property, either in money or in kind, among its shareholders,

according to their respective rights.

Liquidation
under super-
vision of
court

334.(1) The Registrar or any interested person may, at any time during the liquidation of a corporation, apply to a court for an order that the liquidation be continued under the supervision of the court as provided in this Part, and upon the application the court may so order and make any further order it thinks fit.

(2) An applicant under this section must give the Registrar notice of the application, and the Registrar is entitled to appear and be heard in person or by counsel.

Revocation
of intent
to dissolve

335.(1) At any time after issue of a certificate of intent to dissolve and before issue of a certificate of dissolution, a certificate of intent to dissolve may be revoked by sending to the Registrar a statement of revocation of intent to dissolve in prescribed form, if the revocation is approved in the same manner as the resolution under subsection (3) of section 332.

(2) Upon receipt of a statement of revocation of intent to dissolve, the Registrar must issue a certificate of revocation of intent to dissolve in accordance with section 388.

(3) On the date shown in the certificate of revocation of intent to dissolve, the revocation is effective and the corporation may continue to carry on its business or businesses.

Articles of
dissolution

336.(1) If a certificate of intent to dissolve has not been revoked and the corporation has complied with subsection (4) of section 333, the corporation must prepare articles of dissolution.

(2) Articles of dissolution in prescribed form must be sent to the Registrar.

(3) Upon receipt of articles of dissolution, the Registrar must issue a certificate of dissolution in accordance with section 388.

(4) The corporation ceases to exist on the date shown in the certificate of dissolution.

Dissolution
by Registrar

337.(1) Subject to subsections (2) and (3), where a corporation

- (a) has not commenced business within three years after the date shown in its certificate of incorporation;
- (b) has not carried on its business for three consecutive years;
- (c) has not had its name restored to the register within two years after the date on which it was struck off under section 397; or
- (d) is in default for a period of one year in sending to the Registrar any fee, notice or document required by this Act,

the Registrar may dissolve the corporation by issuing a certificate of dissolution under this section or the Registrar may apply to a court for an order dissolving the corporation, in which case section 342 applies.

(2) The Registrar must not dissolve a corporation under this section until the Registrar has

- (a) given to the corporation one hundred and twenty days notice of the Registrar's decision to dissolve the corporation; and
- (b) published in the Gazette notice of the Registrar's decision to dissolve the corporation.

(3) Unless cause to the contrary has been shown or an order has been made by the court under section 372 the Registrar may, after expiry of the period referred to in subsection (2), issue a certificate of dissolution in prescribed form.

(4) The corporation ceases to exist on the date shown in the certificate of dissolution.

Dissolution
by court

338.(1) The Registrar or any interested person may apply to a court for an order dissolving a corporation if the corporation has

- (a) failed for two or more consecutive years to comply with the requirements of this Act with respect to the holding of annual meetings of shareholders;
- (b) contravened section 31, sections 44 to 47, or section 256 or 258; or
- (c) procured any certificate under this Act by misrepresentation.

(2) An applicant under this section must give the Registrar notice of the application, and the Registrar is

entitled to appear and be heard in person or by counsel.

(3) Upon an application under this section or section 337, the court may order that the corporation be dissolved or that the corporation be liquidated and dissolved under the supervision of the court, and the court may make any other order it thinks fit.

(4) Upon receipt of an order under this section, section 337 or section 339, the Registrar must

(a) if the order is to dissolve the corporation, issue a certificate of dissolution in prescribed form; or

(b) if the order is to liquidate and dissolve the corporation under the supervision of the court, issue a certificate of intent to dissolve in prescribed form and publish notice of the order in the Gazette.

(5) The corporation ceases to exist on the date shown in the certificate of dissolution.

Further
grounds

339.(1) A court may order the liquidation and dissolution of a corporation or any of its affiliated corporations upon the application of a shareholder

(a) if the court is satisfied that, in respect of a corporation or any of its affiliates,

(i) any act or omission of the corporation or any of its affiliates effects a result,

(ii) the business or affairs of the corporation or any of its affiliates are or have been carried on or conducted in a manner, or

(iii) the powers of the directors of the corporation or any of its affiliates are or have been exercised in a manner

that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, director or officer; or

(b) if the court is satisfied that

(i) a unanimous shareholder agreement entitles a complaining shareholder to demand dissolution of the corporation after the occurrence of a specified event and that event has occurred, or

(ii) it is just and equitable that the corporation should be liquidated and dissolved.

(2) Upon an application under this section, a court may make such order under this section or section 336 as it thinks fit.

(3) Sections 366 and 367 apply to an application under this section.

Court
supervision

340.(1) An application to a court to supervise a voluntary liquidation and dissolution under section 334 must state the reasons, verified by an affidavit of the applicant, why the court should

supervise the liquidation and dissolution.

(2) If a court makes an order applied for under section 334, the liquidation and dissolution of the corporation must be continued under the supervision of the court in accordance with this Act.

Application
to court

341.(1) An application to a court under section 339 must state the reasons, verified by an affidavit of the applicant, why the corporation should be liquidated and dissolved.

(2) Upon an application under section 339, the court may make an order requiring the corporation and any person having an interest in the corporation or claim against it to show cause, at a time and place therein specified, not less than four weeks after the date of the order, why the corporation should not be liquidated and dissolved.

(3) Upon an application under section 339, the court may order the directors and officers of the corporation to furnish to the court all material information known to or reasonably ascertainable by them, including

- (a) financial statements of the corporation;
- (b) the name and address of each shareholder of the corporation; and
- (c) the name and address of each known creditor or claimant, including any creditor or claimant with unliquidated, future or contingent claims, and any person with whom the corporation has a contract.

(4) A copy of an order made under subsection (2) must be

- (a) published as directed in the order, at least once in each week before the time appointed for the hearing, in a newspaper published or distributed in the place where the corporation has its registered office; and
- (b) served upon the Registrar and each person named in the order.

(5) Publication and service of an order under this section must be effected by the corporation or by such other person and in such manner as the court may order.

Powers of
court

342. In connection with the dissolution or the liquidation and dissolution of a corporation, the court may, if it is satisfied that the corporation is able to pay or adequately provide for the discharge of all its obligations, make any order it thinks fit including, without limiting the generality of the foregoing,

- (a) an order to liquidate;
- (b) an order appointing a liquidator, with or without security, fixing his remuneration and replacing a liquidator;
- (c) an order appointing inspectors or referees, specifying their powers, fixing their remuneration and replacing inspectors or referees;
- (d) an order determining the notice to be given to any interested person, or dispens-

- ing with notice to any person;
- (e) an order determining the validity of any claims made against the corporation;
 - (f) an order, at any stage of the proceedings, restraining the directors and officers from
 - (i) exercising any of their powers, or
 - (ii) collecting or receiving any debt or other property of the corporation, and from paying out or transferring any property of the corporation, except as permitted by the court;
 - (g) an order determining and enforcing the duty or liability of any present or former director, officer of shareholder,
 - (i) to the corporation, or
 - (ii) for an obligation of the corporation;
 - (h) an order approving the payment, satisfaction or compromise of claims against the corporation and the retention of assets for such purpose, and determining the adequacy of provisions for the payment or discharge of obligations of the corporation, whether liquidated, unliquidated, future or contingent;

- (i) an order disposing of or destroying the documents and records of the corporation;
- (j) upon the application of a creditor, the inspectors or the liquidator, an order giving directions on any matter arising in the liquidation;
- (k) after notice has been given to all interested parties, an order relieving a liquidator from any omission or default on such terms as the court thinks fit and confirming any act of the liquidator;
- (l) subject to section 348, an order approving any proposed interim or final distribution to shareholders in money or in property;
- (m) an order disposing of any property belonging to creditors or shareholders who cannot be found;
- (n) upon the application of any director, officer, security holder, creditor or the liquidator
 - (i) an order staying the liquidation on such terms and conditions as the court thinks fit,
 - (ii) an order continuing or discontinuing the liquidation proceedings, or
 - (iii) an order to the liquidator to restore to the corporation all its remaining property; and

- (o) after the liquidator has rendered his or her final account to the court, an order dissolving the corporation.

Commencement
of court
order

343. The liquidation of a corporation commences when a court makes an order therefor.

Effect of
court order

344.(1) If a court makes an order for liquidation of a corporation,

- (a) the corporation continues in existence but shall cease to carry on business, except the business that is, in the opinion of the liquidator, required for an orderly liquidation; and
- (b) the powers of the directors and shareholders cease and vest in the liquidator, except as specifically authorized by the court.

(2) The liquidator may delegate any of the powers vested in the liquidator by paragraph (b) of subsection (1) to the directors or shareholders.

Appointment
of liquidator

345.(1) When making an order for the liquidation of a corporation or at any time thereafter, the court may appoint any body corporate or any person, including a director, officer or shareholder of the corporation, as liquidator of the corporation.

(2) Where an order for the liquidation of a corporation has been made and the office of liquidator is or becomes vacant, the property of the corporation is under the control of the court until the office of liquidator is filled.

Duties of
liquidator

346. A liquidator must,

- (a) forthwith after his or her appointment, give notice thereof to the Registrar and to each claimant and creditor known to the liquidator;
- (b) forthwith publish notice in the Gazette and by insertion once a week for two consecutive weeks in a newspaper published or distributed in the place where the corporation has its registered office and take reasonable steps to give notice thereof in every jurisdiction where the corporation carried on business, requiring any person
 - (i) indebted to the corporation, to render an account and pay to the liquidator at the time and place specified any amount owing,
 - (ii) possessing property of the corporation, to deliver it to the liquidator at the time and place specified, and
 - (iii) having a claim against the corporation, whether liquidated, unliquidated, future or contingent, to present particulars thereof in writing to the liquidator not later than two months after the first publication of the notice;
- (c) take into his or her custody and control the property of the corporation;

- (d) open and maintain a trust account for the moneys of the corporation;
- (e) keep accounts of the moneys of the corporation received and paid out by the liquidator;
- (f) maintain separate lists of the shareholders, creditors and other persons having claims against the corporation;
- (g) if at any time the liquidator determines that the corporation is unable to pay or adequately provide for the discharge of its obligations, apply to the court for directions;
- (h) deliver to the court and to the Registrar, at least once in every twelve-month period after his or her appointment or more often as the court may require, financial statements of the corporation in the form required by section 254 or in such other form as the liquidator may think proper or as the court may require;
- (i) pay the costs of liquidation out of the property of the corporation and pay or make adequate provision for all claims against the corporation; and
- (j) after his or her final accounts are approved by the court, distribute any remaining property of the corporation among the shareholders according to their respective rights.

Powers of
liquidator

347.(1) A liquidator may

- (a) retain lawyers, accountants, engineers, appraisers and other professional advisers;
- (b) bring, defend or take part in any civil, criminal or administrative action or proceeding in the name and on behalf of the corporation;
- (c) carry on the business of the corporation as required for an orderly liquidation;
- (d) sell by public auction or private sale any property of the corporation;
- (e) do all acts and execute any documents in the name and on behalf of the corporation;
- (f) borrow money on the security of the property of the corporation;
- (g) settle or compromise any claims by or against the corporation; and
- (h) do all other things necessary for the liquidation of the corporation and distribution of its property.

(2) A liquidator is not liable if the liquidator relies in good faith upon

- (a) financial statements of the corporation represented to the liquidator by an officer of the corporation or in a written report of the auditor of the corporation to reflect

fairly the financial condition of the corporation; or

- (b) an opinion, a report or a statement of a lawyer, an accountant, an engineer, an appraiser or other professional adviser retained by the liquidator.

(3) If a liquidator has reason to believe that any person has in his or her possession or under his or her control, or has concealed, withheld or misappropriated any property of the corporation, the liquidator may apply to the court for an order requiring that person to appear before the court at the time and place designated in the order and to be examined.

(4) If the examination referred to in subsection (3) discloses that a person has concealed, withheld or misappropriated property of the corporation, the court may order that person to restore it or pay compensation to the liquidator.

Final accounts & dissolution 348.(1) Within one year after his or her appointment, and after paying or making adequate provision for all claims against the corporation, the liquidator must apply to the court

- (a) for approval of the liquidator's final accounts and for an order permitting the liquidator to distribute in money or in kind the remaining property of the corporation to its shareholders according to their respective rights; or
- (b) for an extension of time, setting out the reasons therefor.

(2) If a liquidator fails to make the application required by subsection (1), a shareholder of the corporation may apply to the court for an order for the liquidator to show cause why a final accounting and distribution should not be made.

(3) A liquidator must give notice of the liquidator's intention to make application under subsection (1) to the Registrar, each inspector appointed under section 342, each shareholder and any person who provided a security or fidelity bond for the liquidation, and the liquidator must publish the notice in a newspaper published or distributed in the place where the corporation has its registered office or as otherwise directed by the court.

(4) If the court approves the final accounts rendered by a liquidator, the court must make an order

- (a) directing the Registrar to issue a certificate of dissolution;
- (b) directing the custody or disposal of the documents and records of the corporation; and
- (c) subject to subsection (5), discharging the liquidator.

(5) The liquidator must forthwith send a certified copy of the order referred to in subsection (4) to the Registrar.

(6) Upon receipt of the order referred to in subsection (4), the Registrar must issue a certificate of dissolution in accordance with section 388.

(7) The corporation ceases to exist on the date shown in the certificate of dissolution.

Right to
distribution
in money

349.(1) If in the course of _____ liquidation of a corporation the shareholders resolve or the liquidator proposes

- (a) to exchange all or substantially all the property of the corporation for securities of another body corporate that are to be distributed to the shareholders; or
- (b) to distribute all or part of the property of the corporation to the shareholders in kind,

a shareholder may apply to the court for an order requiring the distribution of the property of the corporation to be in money.

(2) Upon application under subsection (1), the court may order

- (a) that all the property of the corporation be converted into and distributed in money; or
- (b) that the claims of any shareholder applying under this section be satisfied by a distribution in money, in which case section 306 applies.

Custody of
records

350. A person who has been granted custody of the documents and records of a dissolved corporation remains liable to produce such documents and records for six years following the date of its dissolution or until the expiry of such other shorter period as may be ordered under subsection (4) of section 348.

Continuation
of actions
after disso-
lution

351.(1) In this section "shareholder" includes the heirs and legal representatives of a shareholder.

(2) Notwithstanding the dissolution of a corporation under this Act,

(a) a civil, criminal or administrative action or proceeding commenced by or against the corporation before its dissolution may be continued as if the corporation had not been dissolved;

(b) a civil, criminal or administrative action or proceeding may be brought against the corporation within two years after its dissolution as if the corporation had not been dissolved; and

(c) any property that would have been available to satisfy any judgment or order if the corporation had not been dissolved remains available for that purpose.

(3) Service of a document on a corporation after its dissolution may be effected by serving the document upon a person shown in the last notice filed under section 171 or 179.

(4) Notwithstanding the dissolution of a corporation, a shareholder to whom any of its property has been distributed is liable to any person claiming under subsection (2) to the extent of the amount received by that shareholder upon the distribution, and an action to enforce that liability may be brought within two years after the date of the dissolution of the corporation.

(5) A court may order an action referred to in subsection (4) to be brought against the persons who were shareholders as a class, subject to such conditions as the court thinks fit and, if the plaintiff establishes his or her claim, the court may refer the proceedings to a referee or other officer of the court who may

- (a) add as a party to the proceedings before the referee or other officer of the court each person who was a shareholder found by the plaintiff;
- (b) determine, subject to subsection (4), the amount that each person who was a shareholder should contribute towards satisfaction of the plaintiff's claim; and
- (c) direct payment of the amounts so determined.

Unknown
claimants

352.(1) Upon the dissolution of a corporation, the portion of the property distributable to a creditor or shareholder who cannot be found must be converted into money and paid to the Minister of Finance.

(2) A payment under subsection (1) is satisfaction of the debt or claim of the creditor or shareholder.

(3) If at any time a person establishes that the person is entitled to any moneys paid to the Minister of Finance under this Act, the Minister of Finance must pay an equivalent amount to that person out of the Consolidated Revenue Fund.

Vesting of
property

353.(1) Subject to subsection (2) of section 351 and section 352, property

in Crown

of a corporation that has not been disposed of at the date of its dissolution vests in Her Majesty in right of the province.

(2) If a corporation is revived under section 327, any property other than money that vested in Her Majesty pursuant to subsection (1) and that has not been disposed of must be returned to the corporation; and there may be paid to the corporation out of the Consolidated Revenue Fund

(a) an amount equal to any money received by Her Majesty pursuant to subsection (1); and

(b) where property other than money vested in Her Majesty pursuant to subsection (1) and that property has been disposed of, an amount equal to the lesser of

(i) the value of any such property at the date it vested in Her Majesty, and

(ii) the amount realized by Her Majesty from the disposition of that property.

PART XVI

INVESTIGATION

Investigation
ordered

354.(1) A security holder or the Registrar may apply, ex parte or upon such notice as the court may require, to the court for an order directing an investigation to be made of the corporation and any of its affiliated corporations.

(2) If, upon an application under subsection (1), it appears to the court that

- (a) the business of the corporation or any of its affiliates is or has been carried on with intent to defraud any person;
- (b) the business or affairs of the corporation or any of its affiliates are or have been carried on or conducted, or the powers of the directors are or have been exercised in a manner that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of a security holder;
- (c) the corporation or any of its affiliates was formed for a fraudulent or unlawful purpose or is to be dissolved for a fraudulent or unlawful purpose; or
- (d) persons concerned with the formation, business or affairs of the corporation or any of its affiliates have in connection therewith acted fraudulently or dishonestly,

the court may order an investigation to be made of the corporation and any of its affiliated corporations.

(3) If a security holder makes an application under subsection (1) the security holder must give the Registrar reasonable notice thereof, and the Registrar is entitled to appear and be heard in person or by counsel.

(4) An applicant under this section is not required to give security for costs.

(5) An ex parte application under this section must be heard in camera.

(6) No person shall publish anything relating to ex parte proceedings under this section except with the authorization of the court or the written consent of the corporation being investigated.

Court powers
on investigation

355.(1) In connection with an investigation under this Part, the court may make any order it thinks fit including, without limiting the generality of the foregoing,

- (a) an order to investigate;
- (b) an order appointing an inspector, who may be the Registrar, fixing the remuneration of an inspector, and replacing an inspector;
- (c) an order determining the notice to be given to any interested person, or dispensing with notice to any person;
- (d) an order authorizing an inspector to enter any premises in which the court is satisfied there might be relevant information, and to examine anything and make copies of any document or record document or record found on the premises;
- (e) an order requiring any person to produce documents or records to the inspector;

- (f) an order authorizing an inspector to conduct a hearing, administer oaths and examine any person upon oath, and prescribing rules for the conduct of the hearing;
- (g) an order requiring any person to attend a hearing conducted by an inspector and to give evidence upon oath;
- (h) an order giving directions to an inspector or any interested person on any matter arising in the investigation;
- (i) an order requiring an inspector to make an interim or final report to the court;
- (j) an order determining whether a report of an inspector should be published and, if so, ordering the Registrar to publish the report in whole or in part or to send copies to any person the court designates;
- (k) an order requiring an inspector to discontinue an investigation; or
- (1) an order requiring the corporation to pay the costs of the investigation.

(2) An inspector must send to the Registrar a copy of every report made by the inspector under this Part.

Power of
inspector

356.(1) An inspector under this Part has the powers set out in the order appointing the inspector.

(2) In addition to the powers set out in the order appointing him, an

inspector appointed to investigate a corporation may furnish to, or exchange information and otherwise cooperate with, any public official in the province or elsewhere who is authorized to exercise investigatory powers and who is investigating, in respect of the corporation, any allegation of improper conduct that is the same as or similar to the conduct described in subsection (2) of section 354.

(3) An inspector must upon request produce to an interested person a copy of any order made under subsection (1) of section 355.

Hearing

357.(1) Any interested person may apply to the court for an order that a hearing conducted by an inspector under this Part be heard in camera and for directions on any matter arising in the investigation.

(2) A person whose conduct is being investigated or who is being examined at a hearing conducted by an inspector under this Part has a right to be represented by counsel.

Criminating
statements

358. No person is excused from attending and giving evidence and producing documents and records to an inspector under this Part by reason only that the evidence tends to criminate that person or subject that person to any proceeding or penalty, but that evidence may not be used or received against that person in any proceeding thereafter instituted against that person, other than a prosecution for perjury in giving the evidence or a prosecution for the giving of contradictory evidence.

Absolute
privilege

359. Any oral or written statement or report made by an inspector or any

other person in an investigation under this Part has absolute privilege.

Information
respecting
ownership

360.(1) If the Registrar is satisfied that, for the purposes of Part IX or XI, or for the purposes of enforcing any regulation made under section 277, there is reason to inquire into the ownership or control of a security of a corporation or any of its affiliates, the Registrar may require any person that the Registrar reasonably believes has or has had an interest in the security or acts or has acted on behalf of a person with such an interest, to report, to the Registrar or to any person whom the Registrar designates,

- (a) information that such person has or can reasonably be expected to obtain as to present and past interests in the security; and
- (b) the names and addresses of the persons so interested and of any person who acts or has acted in relation to the security on behalf of the persons so interested.

(2) For the purposes of subsection (1), a person has an interest in a security if

- (a) the person has a right to vote or to acquire or dispose of the security or any interest therein;
- (b) the person's consent is necessary for the exercise of the rights or privileges of any other person interested in the security; or
- (c) any other person interested in the security can be required

or is accustomed to exercise rights or privileges attached to the security in accordance with his or her instructions.

Solicitor-client privilege

361. Nothing in this Part affects the privilege that exists in respect of a solicitor and the solicitor's client.

Inquiries

362. The Registrar may make inquiries of any person relating to compliance with this Act.

PART XVII

CIVIL REMEDIES

Definitions for Part

363. In this Part

(a) "action" means an action under this Act; and

(b) "complainant" means

(i) a registered holder or beneficial owner, and a former registered holder or beneficial owner of a security of a corporation or any of its affiliates,

(ii) a director or an officer or a former director or officer of a corporation or any of its affiliates,

(iii) the Registrar, or

(iv) any other person who, in the discretion of a court, is a proper person to make an application under this Part.

Derivative action

364.(1) Subject to subsection (2), a complainant may apply to a court for

leave to bring an action in the name and on behalf of a corporation or any of its subsidiaries, or intervene in an action to which any such body corporate is a party, for the purpose of prosecuting, defending or discontinuing the action on behalf of the body corporate.

(2) No action may be brought and no intervention in an action may be made under subsection (1) unless the court is satisfied

- (a) that the complainant has given reasonable notice to the directors of the corporation or its subsidiary of his or her intention to apply to the court under subsection (1) if the directors of the corporation or its subsidiary do not bring, diligently prosecute or defend or discontinue the action;
- (b) that the complainant is acting in good faith; and
- (c) that it appears to be in the interests of the corporation or its subsidiary that the action be brought, prosecuted, defended or discontinued.

Powers of
court

365. In connection with an action brought or intervened in under section 364, the court may at any time make any order it thinks fit including, without limiting the generality of the foregoing,

- (a) an order authorizing the complainant or any other person to control the conduct of the action;
- (b) an order giving directions for the conduct of the action;

- (c) an order directing that any amount adjudged payable by a defendant in the action be paid, in whole or in part, directly to former and present security holders of the corporation or its subsidiary instead of to the corporation or its subsidiary; and
- (d) an order requiring the corporation or its subsidiary to pay reasonable legal fees incurred by the complainant in connection with the action.

Rectifying
oppression

366.(1) A complainant may apply to a court for an order under this section.

(2) If, upon an application under subsection (1), the court is satisfied that in respect of a corporation or any of its affiliates

- (a) any act or omission of the corporation or any of its affiliates effects a result;
- (b) the business or affairs of the corporation or any of its affiliates are or have been carried on or conducted in a manner; or
- (c) the powers of the directors of the corporation or any of its affiliates are or have been exercised in a manner,

that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, director or officer, the court may make an order to rectify the matters complained of.

(3) In connection with an application under this section, the court may make any interim or final order it thinks fit including, without limiting the generality of the foregoing,

- (a) an order restraining the conduct complained of;
- (b) an order appointing a receiver or receiver-manager;
- (c) an order to regulate a corporation's affairs by amending the articles or by-laws or creating or amending a unanimous shareholder agreement;
- (d) an order directing an issue or exchange of securities;
- (e) an order appointing directors in place of or in addition to all or any of the directors then in office;
- (f) an order directing a corporation, subject to subsection (6), or any other person, to purchase securities of a security holder;
- (g) an order directing a corporation, subject to subsection (6), or any other person, to pay to a security holder any part of the moneys paid by the security holder for securities;
- (h) an order varying or setting aside a transaction or contract to which a corporation is a party and compensating the corporation or any other party to the transaction or contract;

- (i) an order requiring a corporation, within a time specified by the court, to produce to the court or an interested person financial statements in the form required by section 254 or an accounting in such other form as the court may determine;
 - (j) an order compensating an aggrieved person;
 - (k) an order directing rectification of the registers or other records of a corporation under section 369;
 - (l) an order liquidating and dissolving the corporation;
 - (m) an order directing an investigation under Part XVI to be made; and
 - (n) an order requiring the trial of any issue.
- (4) If an order made under this section directs amendment of the articles or by-laws of a corporation,
- (a) the directors must forthwith comply with subsection (4) of section 310; and
 - (b) no other amendment to the articles or by-laws may be made without the consent of the court, until a court otherwise orders.
- (5) A shareholder is not entitled to dissent under section 300 if an amendment to the articles is effected under this section.

(6) A corporation shall not make a payment to a shareholder under paragraph (f) or (g) of subsection (3) if there are reasonable grounds for believing that

- (a) the corporation is or would after that payment be unable to pay its liabilities as they become due; or
- (b) the realizable value of the corporation's assets would thereby be less than the aggregate of its liabilities.

(7) An applicant under this section may apply in the alternative for an order under section 339.

Staying or
dismissing
action

367.(1) An application made or an action brought or intervened in under this Part may not be stayed or dismissed by reason only that it is shown that an alleged breach of a right or duty owed to the corporation or its subsidiary has been or may be approved by the shareholders of such body corporate, but evidence or approval by the shareholders may be taken into account by the court in making an order under section 339, 365 or 366.

(2) An application made or an action brought or intervened in under this Part may not be stayed, discontinued, settled or dismissed for want of prosecution without the approval of the court given upon such terms as the court thinks fit and, if the court determines that the interests of any complainant could be substantially affected by the stay, discontinuance, settlement or dismissal, the court may order any party to the application or action to give notice to the complainant.

Costs

368.(1) A complainant is not required to give security for costs in any application made or action brought or intervened in under this Part.

(2) In an application made or an action brought or intervened in under this Part, the court may at any time order the corporation or its subsidiary to pay to the complainant interim costs, including legal fees and disbursements, but the complainant may be held accountable for those interim costs upon final disposition of the application or action.

Rectification of corporate records

369.(1) If the name of a person is alleged to be or to have been wrongly entered or retained in, or wrongly deleted or omitted from, the registers or other records of a corporation, the corporation, a security holder of the corporation or any aggrieved person may apply to a court for an order that the registers or records be rectified.

(2) An applicant under this section must give the Registrar notice of the application and the Registrar is entitled to appear and be heard in person or by counsel.

(3) In connection with an application under this section, the court may make any order it thinks fit including, without limiting the generality of the foregoing,

- (a) an order requiring the registers or other records of the corporation to be rectified;
- (b) an order restraining the corporation from calling or holding a meeting of shareholders or paying a dividend before such rectification;

- (c) an order determining the right of a party to the proceedings to have the party's name entered or retained in, or deleted or omitted from, the registers or records of the corporation, whether the issue arises between two or more security holders or alleged security holders, or between the corporation and any security holders or alleged security holders; and
- (d) an order compensating a party who has incurred a loss.

Applications
for
directions

370. The Registrar may apply to a court for directions in respect of any matter concerning his or her duties under this Act, and on such application the court may give such directions and make such further order as it thinks fit.

Notice of
refusal by
Registrar

371.(1) If the Registrar refuses to file any articles or other document required by this Act to be filed by the Registrar before the articles or other document become effective, the Registrar must, within sixty days after receipt thereof by the Registrar or sixty days after the Registrar receives any approval that may be required under any other Act, whichever is the later, and after giving the person who sent the articles or document an opportunity to be heard, give written notice of his or her refusal to the person together with reasons therefor.

(2) If the Registrar does not file or give written notice of his or her refusal to file any articles or document within the time limited therefor in subsection (1), then, for the purposes of section 372 the Registrar has refused to file the articles or document.

Appeal from
Registrar's
decision

372. A person who feels aggrieved
by a decision of the Registrar

- (a) to refuse to file in the form submitted to the Registrar any articles or other document required by this Act to be filed;
- (b) to give a name, to change or revoke a name, or to refuse to reserve, accept, change or revoke a name under sections 24 to 27;
- (c) to refuse to grant an exemption under subsection (2) of section 20, section 249, section 255, subsection (4) of section 262 or subsection (2) of section 272 and any regulations thereunder;
- (d) to refuse under subsection (2) of section 293 to permit a continued reference to shares having a nominal or par value;
- (e) to refuse to issue a certificate of discontinuance under section 297;
- (f) to refuse to revive a corporation under section 327; or
- (g) to dissolve a corporation under section 337,

may apply to a court for an order requiring the Registrar to change his or her decision, and upon such application the court may so order and make any further order it thinks fit.

Restraining
or compli-
ance order

373.(1) If a corporation or any director, officer, employee, agent, auditor, trustee, receiver, receiver-

manager or liquidator of a corporation does not comply with this Act, the regulations, articles, by-laws, or a unanimous shareholder agreement, a complainant or a creditor corporation may, in addition to any other right the complainant or a creditor of the corporation has, apply to a court for an order directing any such person to comply with, or restraining any such person from acting in breach of, any provisions thereof, and upon the application the court may so order and make any further order it thinks fit.

Summary
application
to court

374. Where this Act states that a person may apply to a court, the application may be made in a summary manner by petition, originating notice of motion, or otherwise as the rules of the court provide, but subject to any order respecting notice to interested parties or costs, or any other order the court thinks fit.

Appeal

375. An appeal lies to the Court of Appeal from any order made by a court under this Act.

PART XVIII

GENERAL & ADMINISTRATION

Registrar of Companies

Appointment
of Registrar

376.(1) The Lieutenant-Governor in Council may appoint a Registrar of Companies and one or more deputies who may carry out the duties and exercise the powers of the Registrar under this Act.

(2) The Lieutenant-Governor in Council may prescribe a seal for use by the Registrar in the performance of his duties.

Service
upon

377. A document may be served on the Registrar by leaving it at the

Registrar office of the Registrar or by mailing it by registered post or certified mail addressed to the Registrar at the Registrar's office.

Records

Registrar of companies 378. The Registrar must maintain a register of companies in which to keep the name of every body corporate that is

- (a) incorporated under this Act;
- (b) continued as a corporation under this Act;
- (c) registered under this Act; or
- (d) restored to the register pursuant to this Act,

and that has not been subsequently struck off the register.

Inspection of documents 379.(1) A person who has paid the prescribed fee is entitled, during the normal business hours, to examine, and to make copies of or extracts from, a document required by this Act or the regulations to be sent to the Registrar, except a report sent to the Registrar under subsection (2) of section 355.

(2) The Registrar must, upon request and payment of the prescribed fee, furnish any person with a copy or a certified copy of any document received by the Registrar under this Act, except a report received by the Registrar pursuant to subsection (2) of section 355.

(3) If records maintained by the Registrar are prepared and maintained in other than a written form,

- (a) the Registrar must furnish any copy required to be furnished

under subsection (2) in intelligible written form; and

- (b) a report reproduced from those records, if it is certificated by the Registrar, is admissible in evidence to the same extent as the original written records would be.

Documents, etc.

Notice to
directors &
share-
holders

380.(1) A notice or document required by this Act, the regulations, the articles, or the by-laws to be sent to a shareholder or director of a corporation may be sent by prepaid mail addressed to, or may be delivered personally to,

- (a) the shareholder at the shareholder's latest address as shown in the records of the corporation or its transfer agent; and
- (b) the director at the director's latest address as shown in the records of the corporation or in the last notice filed under section 171 or 179.

(2) A director named in a notice sent by a corporation to the Registrar under section 171 or 179 and filed by the Registrar is, for the purposes of this Act, a director of the corporation referred to in the notice.

Presumption
of receipt

381. A notice or document sent in accordance with section 380 to a shareholder or director of a corporation is, for the purpose of this Act, presumed to be received by the shareholder or director at the time it would be delivered in the ordinary court of mail unless there are reasonable grounds for believing that the shareholder or

director did not receive the notice or document at that time or at all.

Undelivered
notices

382. If a corporation sends a notice or document to a shareholder in accordance with section 380 and the notice or document is returned on three consecutive occasions because the shareholder cannot be found, the corporation is not required to send any further notices or documents to the shareholder until the shareholder informs the corporation in writing of his or her new address.

Waiver of
notice

383. Where a notice or document is required to be sent pursuant to this Act, the sending of the notice or document may be waived or the time for the notice or document may be waived or abridged at any time with the consent in writing of the person entitled thereto.

Certificate
by
corporation

384. A certificate issued on behalf of a corporation stating any fact that is set out in the articles, the by-laws, an unanimous shareholder agreement, the minutes of the meetings of the directors, a committee of directors or the shareholders, or in a trust indenture or other contract to which the corporation is a party may be signed by a director, an officer or a transfer agent of the corporation.

Evidentiary
value of
documents

385. When introduced as evidence in any civil, criminal or administrative action or proceeding

- (a) a fact stated in a certificate referred to in section 384;
- (b) a certified extract from a securities register of a corporation; or
- (c) a certified copy of minutes or extract from minutes of a

meeting of shareholders, directors or a committee of directors of a corporation,

is, in the absence of evidence to the contrary, proof of the fact so certified without proof of the signature or official character of the person appearing to have signed the certificate.

Security
certificate

386. An entry in a securities register of, or a security certificate issued by, a corporation is, in the absence of evidence to the contrary, proof that the registered owner is owner of the securities described in the register or in the certificates.

Copies

387. Where a notice or document is required to be sent to the Registrar under this Act, the Registrar may accept a photostatic or photographic copy thereof.

Execution
& filing of
articles

388.(1) In this section "statement" means a statement of intent to dissolve referred to in section 333 and a statement of revocation of intent to dissolve referred to in section 335.

(2) Where this Act requires that articles or a statement relating to a corporation be sent to the Registrar, unless otherwise specifically provided,

- (a) two copies (in this section called "duplicate originals") of the articles or the statement must be signed by a director or an officer of the corporation or, in the case of articles of incorporation, by the incorporator; and
- (b) upon receiving duplicate originals or any articles or statement that conform to law, and any other required docu-

ments and the prescribed fees, the Registrar must

- (i) endorse on each of the duplicate originals the word "Registered" and the date of the registration,
- (ii) issue in duplicate the appropriate certificate and attach to each certificate one of the duplicate originals of the articles or statement,
- (iii) file a copy of the certificate and attached articles or statement,
- (iv) send to the corporation or its representative the original certificate and attached articles or statement, and
- (v) publish in the Gazette notice of the issue of the certificate.

(3) A certificate referred to in subsection (2) and issued by the Registrar may be dated as of the day the Registrar receives the articles, statement or court order pursuant to which the certificate is issued or as of any later day specified by the court or person who signed the articles or statement.

(4) A signature required on a certificate referred to in subsection (2) may be printed or otherwise mechanically reproduced thereon.

(5) Notwithstanding subsection (3), a certificate of discontinuance mentioned in section 297 and issued in respect of a corporation may be dated as

of the day the corporation is continued under the laws of another jurisdiction.

Alteration
of document

389. The Registrar may alter a notice or document, other than an affidavit or statutory declaration, if so authorized by the person who sent the document or by his or her representative.

Correction

390.(1) If a certificate containing an error is issued to a corporation by the Registrar, the directors or shareholders of the corporation must, upon the request of the Registrar, pass the resolutions and send to the Registrar the documents required to comply with this Act, and take such other steps as the Registrar may reasonably require, and the Registrar may demand the surrender of the certificate and issue a corrected certificate.

(2) A certificate corrected under subsection (1) must bear the date of the certificate it replaces.

(3) If a corrected certificate issued under subsection (1) materially amends the terms of the original certificate, the Registrar must forthwith give notice of the correction in the Gazette.

Proof of
documents

391.(1) The Registrar may require that a document or a fact stated in a document required or sent to the Registrar pursuant to this Act be verified in accordance with subsection (2).

(2) A document or fact required by this Act or by the Registrar to be verified may be verified by affidavit or affirmation.

(3) The Registrar may require of a body corporate the authentication of a document, and the authentication may be

signed by the secretary, or any director or authorized person or by the solicitor for the body corporate.

Obligation
to furnish
records

392. Where records maintained by the Registrar are prepared and maintained in a form mentioned in section 42,

- (a) the Registrar must furnish any copy required to be furnished under section 379 in written form; and
- (b) a report produced from those records, if it is certified by the Registrar, is admissible in evidence to the same extent as the original written records would be.

Retention
of records

393. The Registrar is not required to produce any document other than a certificate and attached articles or statement filed under section 388, after six years from the date the Registrar received it.

Certificate
of Registrar

394.(1) The Registrar may furnish any person with a certificate stating

- (a) that a body corporate has or has not sent to the Registrar a document required to be sent to the Registrar pursuant to this Act;
- (b) that a name, whether that of a corporation or not, is or is not on the register; or
- (c) that a name, whether that of a corporation or not, was or was not on the register on a stated date.

(2) Where this Act requires or authorizes the Registrar to issue a

certificate or to certify any fact, the certificate or the certification must be signed by the Registrar or by the Registrar's deputy.

(3) Except, in a proceeding under section 338 to dissolve a corporation, a certificate or certification mentioned in subsection (2), when introduced as evidence in any civil, criminal or administrative action or proceeding, is exclusive proof of the facts so certified without proof of the signature or official character of the person appearing to have signed the certificate.

Power to
refuse
documents

395.(1) The Registrar may refuse to receive, file or register a document submitted to the Registrar, if the Registrar is of the opinion that the document

- (a) contains matter contrary to the law;
- (b) by reason of any omission or error in description, has not been duly completed;
- (c) does not comply with the requirements of this Act;
- (d) contains any error, alteration or erasure;
- (e) is not sufficiently legible;
or
- (f) is not sufficiently permanent for the Registrar's records.

(2) The Registrar may request that a document refused under subsection (1) be amended or completed and re-submitted, or that a new document be submitted in its place.

(3) If a document submitted to the Registrar is accompanied by a statutory declaration by a solicitor of the Supreme Court that the document contains no matter contrary to law and has been duly completed in accordance with the requirements of this Act, the Registrar may accept the declaration as conclusive proof of the facts therein declared.

Form of documents filed

396. Every document sent to the Registrar must be in typed or printed form.

(2) Where any document required pursuant to this Act is not in the English language, the Registrar may require a translation thereof certified by a solicitor of the Supreme Court.

Striking name off register

397.(1) The Registrar may strike the name of a corporation or other body corporate off the register if

- (a) the body corporate fails to send any return, notice, document or prescribed fee to the Registrar as required pursuant to this Act;
- (b) the corporation is issued a certificate of discontinuance pursuant to section 297;
- (c) the corporation is dissolved;
- (d) the corporation is amalgamated with one or more other corporations;
- (e) the corporation does not carry out an undertaking given under subparagraph (i) of paragraph (a) of section 401; or

(f) the registration of the body corporate is revoked pursuant to this Act.

(2) Where the Registrar is of the opinion that a body corporate is in default under paragraph (a) of subsection (1), the Registrar must send to the body corporate a notice advising it of the default and stating that, unless the default is remedied within thirty days after the date of the notice, its name will be struck off the register.

(3) Section 398 applies mutatis mutandis to the notice mentioned in subsection (2).

(4) After the expiry of the time mentioned in the notice, the Registrar may strike the name of the corporation or other body corporate off the register and publish notice thereof in the Gazette.

(5) Where the name of a body corporate is struck off the register, the Registrar may, upon receipt of an application in the prescribed form and upon payment of the prescribed fee, restore the name of the body corporate to the register and may issue a certificate in a form adapted to the circumstances.

Liability
continues

398. Where the name of a body corporate is struck off the register, the liability of the body corporate and of every director or officer or member of the body corporate continues and may be enforced as if its name had not been struck off the register.

Service on
corporation

399. A notice or document may be served on a corporation

- (a) by leaving it at or mailing it by registered mail addressed to, the registered office of the corporation; or
- (b) by personally serving any director, officer, receiver-manager or liquidator of the corporation.

Corporate Name

Reservation of name

400. The Registrar may, upon request and upon payment of the prescribed fee, reserve for ninety days a name for an intended corporation or for a corporation about to change its name.

Prohibited name

401. The name of a corporation

- (a) must not be the same as or similar to the name of any other corporation, or to the name of any association, partnership or firm, if the use of that name would be likely to confuse or mislead, unless the corporation, association, partnership or firm consents in writing to the use of the name in whole or in part and,
 - (i) if required by the Registrar in the case of a corporation, undertakes to dissolve or change its name to a dissimilar name within six months after the filing of the articles by which the name is required, or
 - (ii) if required by the Registrar in the case of an association, partnership or firm, undertakes to cease to carry on its

business or activities, or to change its name to a dissimilar name, within six months after the filing of the articles by which the name is acquired;

- (b) must not be identical to the name of a body corporate heretofore incorporated under the laws of the province;
- (c) must not suggest or imply a connection with the Crown or the government of Canada or of any province or any department, branch, bureau, service, agency or activity of any such government, unless the authority concerned consents in writing to the proposed name;
- (d) must not suggest or imply a connection with a political party or a leader of a political party;
- (e) must not suggest or imply a connection with a university or a professional association recognized by the laws of Canada or of a province, unless the university or professional association concerned consents in writing to the use of the proposed name; and
- (f) must not be a name that is prohibited by the regulations.

Power to
refuse name

402. The Registrar may refuse to accept articles of incorporation or continuation for a corporation or to register articles amending the name of a corporation if

- (a) the name is not distinctive because
 - (i) it is too general,
 - (ii) it is descriptive only of the quality, function or other characteristic of the goods or services in which the corporation deals or intends to deal, or
 - (ii) primarily it is only a geographic name used alone,unless the applicant establishes that the name has through use acquired and continues to have a secondary meaning;
- (b) the name is deceptively inaccurate in describing
 - (i) the business, goods or services in association with which it is proposed to be used,
 - (ii) the conditions under which the goods or services will be produced or supplied,
 - (iii) the persons to be employed in the production or supply of those goods or services, or
 - (iv) the place of origin of those goods and services;
- (c) the name is likely to be confusing with that of a corporation that was dissolved;

- (d) the name contains the word or words "credit union", "co-operative", or "co-op" when it connotes a co-operative venture; or
- (e) the name is, in the opinion of the Registrar, for any reason, objectionable.

Name on
amalgamation

403. If two or more corporations amalgamate, the amalgamated corporation may have

- (a) the name of one of the amalgamating corporations;
- (b) a distinctive combination, that is not confusing, of the names of the amalgamating corporations; or
- (c) a distinctive new name that is not confusing.

Name as
condition
of revival

404. Where a corporation has been revived under this Act, if between the date of its dissolution and the date of its revival another corporation has been granted a name that is likely to be confused with the name of the revived corporation, the Registrar may require as a condition of revival that the revived corporation does not carry on business or, if it seeks to carry on business, that it change its name immediately after it is revived.

Annual
return

405.(1) Every corporation shall, not later than the first day of April in each year after the date of its registration, forward to the Registrar an annual return in the prescribed form and containing the prescribed information made up to the preceding thirty-first day of December and accompanied by the proper fees.

(2) A director, officer or solicitor of the corporation must certify the contents of any return made under this section.

(3) The Registrar may strike off the register a corporation (other than a federal company) that neglects or refuses to file a return required under this section within the period limited therefor.

Regulations

Regulations

406. The Lieutenant-Governor in Council may make such regulations as are required for the better administration of this Act, and, without restricting the generality of the foregoing, the Lieutenant-Governor in Council may make regulations

- (a) prescribing any matter required or authorized by this Act to be prescribed;
- (b) requiring the payment of a fee in respect of the filing, examination or copying of any document, or in respect of any action that the Registrar is required or authorized to take under this Act, and prescribing the amount thereof;
- (c) prescribing the format and contents of returns, notices or other documents required to be sent to the Registrar or to be issued by the Registrar;
- (d) prescribing the rules with respect to exemptions permitted by this Act;
- (e) respecting the names of corporations or classes thereof;

- (f) prescribing that, for the purpose of paragraph (a) of subsection (1) of section 254, the standards as they exist from time to time, of an accounting body named in the regulations shall be followed;
- (g) requiring the payment of a fee in respect of an application and certificate of continuance under Part XIX and prescribing the amount thereof; and
- (h) respecting any other matter required for the efficient administration of this Act.

PART XIX

CONTINUATION OF FORMER-ACT COMPANIES

- | | | |
|--|------------------|--|
| Matters
done under
Companies Act | 407.(1) this Act | Upon the commencement of |
| | (a) | all constating instruments of a former-Act company, |
| | (b) | all cancellations, suspensions, proceedings, acts, registrations and things, and |
| | (c) | all affidavits, declarations and documents, |

lawfully done under any provision of the former Act are presumed to have been lawfully done under this Act and continue in effect under this Act as though they had been lawfully done under this Act.

(2) For the purposes of this section "lawfully done" means to have been lawfully granted, issued, imposed, taken, done, commenced, filed or passed, as the circumstances require.

Effect of
such matters

408.(1) Notwithstanding any other provision of this Act but subject to subsection (3), if any provision of a constating instrument of a former-Act company lawfully in force immediately before the commencement of this Act is inconsistent with, repugnant to, or not in compliance with this Act, that provision is not illegal or invalid solely by reason of that inconsistency, repugnancy or non-compliance.

(2) Any act, matter or proceeding or thing done or taken by the former-Act company or any director, shareholder or officer of the company under a provision mentioned in subsection (1) is not illegal or invalid by reason solely of the inconsistency, repugnancy or non-compliance mentioned in that subsection or by reason of being prohibited or not authorized by the law as it is after the commencement of this Act.

(3) Section 199 applies to a former-Act company immediately upon the commencement of this Act.

Application
continuance

409.(1) Every former-Act company must, within two years after the commencement of this Act, apply to the Registrar for a certificate of continuance under this Act.

(2) Subject to subsection (1), every former-Act company continues in being, for all purposes, without any loss of status, upon the coming into force of this Act.

(3) A fee to defray administration costs may be prescribed in respect of an application and certificate of continuance under this Part.

Amending
instruments

410. Within the period described in section 409, any amendments to the constating instruments of a former-Act

company must be made, as nearly as may be, in accordance with this Act.

Articles of
continuance

411.(1) Articles of continuance may, without so stating in the articles, effect any amendment to the constating instruments of a former-Act company, whether incorporated in, confirmed or ratified by or referred to in a statute or any regulation thereunder, if the amendment is an amendment that a corporation incorporated under this Act may make in its articles.

(2) Articles of continuance in prescribed form must be sent to the Registrar together with the documents required by sections 37 and 171.

(3) A shareholder may not dissent under section 300 in respect of an amendment made under subsection (1).

Certificate
of continu-
ance

412.(1) Upon receipt of an application under this Part the Registrar may, and, if the applicant complies with all reasonable requirements of the Registrar to have the continued corporation accord with the requirements of this Act, the Registrar must, issue a certificate of continuance to the former-Act company, in accordance with section 388.

(2) On the date shown in the certificate of continuance

(a) the former-Act company becomes a corporation to which this Act applies as if it had been incorporated under this Act;

(b) the articles of continuance are the articles of incorporation of the continued corporation; and

(c) except for the purposes of subsection (1) of section 167, the certificate of continuance is the certificate of incorporation of the continued corporation.

Application
of sections
293 & 294

413. Sections 293 and 294 apply, with such modifications as the circumstances require, to a corporation continued under this Part.

Deemed
dissolution

414. When a former-Act company fails to apply to the Registrar for a certificate of continuance within the time limited therefor under section 409, then, from and after the expiration of that period, the former-Act company is deemed to be dissolved.

Effect of
references
to Companies
Act

415.(1) A reference in any constating instrument of any body corporate to The Companies Act as it existed before the commencement of this Act or any procedure under The Companies Act is to be construed as a reference to the provisions of this Act or procedure thereunder that is the equivalent provision of procedure under this Act.

(2) Without prejudicing the operation of section 29 of The Interpretation Act, when there is no equivalent provision in this Act to the reference made in the constating instrument of a body corporate to The Companies Act, the provision or proceeding of The Companies Act is to be applied and stands unrepealed to the extent necessary to give effect to that reference in the constating instrument.

PART XX

CORPORATIONS WITHOUT SHARE CAPITAL

Application

Application
of Part

416. This Part applies to every corporation without share capital, and the word "corporation" used in this Part means such a corporation.

Interpretation

Definitions

417. When used in relation to a corporation without share capital

- (a) the word "member" refers to a member having rights through membership interest in the corporation in accordance with the provisions of this Act and the articles and by-laws of the corporation; and
- (b) the word "security" refers to a debt obligation of a body corporate and includes a certificate evidencing the debt obligation.

Incorporation and
Membership

Restriction
under this
Part

418. A corporation in respect of which this Part applies must restrict its undertaking to one that is only of a patriotic, religious, philanthropic, charitable, educational, scientific, literary, historical, artistic, social, professional, fraternal, sporting or athletic nature or the like.

Form of
articles

419. The articles must be in the prescribed form and in addition must state

- (a) the restrictions on the undertaking that the corporation may carry on;
- (b) that the corporation has no authorized share capital and

is to be carried on without pecuniary gain to its members, and that any profits or other accretions to the corporation are to be used in furthering its undertaking;

(c) where the undertaking of the corporation is of a social nature, the address in full of the clubhouse or similar building that the corporation is maintaining; and

(d) that each first director becomes a member of the corporation upon its incorporation.

Directors

420.(1) A corporation may have no fewer than three directors.

(2) The articles or by-laws of a corporation may provide for individuals becoming directors by virtue of holding some office outside the corporation.

Use of
"incorporated", etc.

421.(1) Notwithstanding section 20, the word "Incorporated", "Incorporated" or "Corporation", or the abbreviation "Inc." or "Corp.", must be the last word of the name of each corporation without share capital, but a corporation may use and may be legally designated by either the full or the abbreviated form.

(2) This section does not apply to a corporation incorporated before the commencement of this Act; but this section applies to any corporation so incorporated that changes its name by amended articles.

Number and
classes of
numbers

422.(1) Unless the articles or by-laws of a corporation otherwise provide, there is no limit on the number of members of the corporation.

(2) The articles or by-laws of a corporation may provide for more than one class of membership and, in that case, the articles must set forth the designation of and the terms and conditions attaching to each class.

Admission to
membership

423. Subject to the articles or by-laws of a corporation, persons may be admitted to membership in a corporation by resolution of the directors; but the articles or by-laws may provide

(a) that the resolution is not effective until confirmed by the members in general meeting; and

(b) that members may be admitted by virtue of holding some office outside the corporation.

Voting by
members

424.(1) Subject to subsection (2), each member of each class of members has one vote.

(2) The articles or by-laws of a corporation may provide that each member of a specified class has more than one vote or has no vote.

Transfer-
ability of
interest

425.(1) Unless the articles of a corporation otherwise provide, the interest of a member in a corporation is not transferable and lapses and ceases to exist upon the member's death or when the member ceases to be a member by resignation or otherwise in accordance with the by-laws of the corporation.

(2) Where the articles provide that the interest of a member in the corporation is transferable, the by-laws may not restrict the transfer of that interest.

Power to make
by-laws re
members

426. The directors of a corporation may make by-laws, not being contrary to this Act or the articles of the corporation, respecting

- (a) the admission of persons and unincorporated associations as members and as ex officio members, and the qualifications of the conditions of membership ;
- (b) the fees and dues of members;
- (c) the issue of membership cards and certificates;
- (d) the suspension and termination of membership by the corporation and by a member;
- (e) where the articles provide that the interest of a member is transferable, the method of transfer of membership;
- (f) the qualifications of, and the remuneration of, the directors and the ex officio directors, if any;
- (g) the time for and the manner of election of directors;
- (h) the appointment, remuneration functions, duties and removal of agents, officers and employees of the corporation, and the security, if any, to be given by them to the corporation;
- (i) the time and place, and the notice to be given, for the holding of meetings of the members and of the board of directors, the quorum at meetings of members, the require-

ment as to proxies, and the proceedings in all things at meetings of the members and at meetings of the board of directors; and

- (j) the conduct in all other particulars of the affairs of the corporation.

By-laws re
groups and
delegates

427.(1) The directors of a corporation may make by-laws respecting

- (a) the division of its members into groups, either territorially or on the basis of common interest;
- (b) the election of some or all of the directors
 - (i) by the groups on the basis of the number of members in each group,
 - (ii) for the groups in a defined geographical area, by the delegates of the groups meeting together, or
 - (iii) by the groups on the basis of common interest;
- (c) the election of delegates and alternate delegates to represent each group on the basis of the number of members in each group;
- (d) the number and qualifications of delegates and the method of their election;
- (e) the holding of meetings of members or delegates;

- (f) the powers and authority of delegates at meetings; and
- (g) the holding of meetings of members or delegates territorially or on the basis of common interest.

(2) A by-law passed under paragraph (f) of subsection (1) may provide that a meeting of delegates for all purposes is a meeting of the members with all the powers of such a meeting.

(3) A by-law under subsection (1) is not effective until it is confirmed by at least two-thirds of the votes cast at a general meeting of the members duly called for that purpose.

(4) A delegate has only one vote and may not vote by proxy.

(5) A by-law passed under subsection (1) may not prohibit members from attending meetings of delegates and participating in the discussions at the meetings.

Disposition
of property
on dissolution

428.(1) The articles of incorporation of a corporation must provide, by special resolution, that, upon dissolution, after payment of all its debts and liabilities, for the distribution or disposition of the remaining property to any organization in the province the undertaking of which is charitable or beneficial to the community.

(2) A distribution or disposition in accordance with subsection (1) is sufficient compliance with paragraph (d) of subsection (4) of section 333 and paragraph (i) of section 346.

PART XXI

REGISTRATION OF INCORPORATED COMPANIES

Definitions
for Part

429.(1) In this Part

- (a) "domestic company" means any body corporate that
 - (i) is incorporated by or under any Act of Newfoundland or Province of Newfoundland, as the case may be, other than the former Act or this Act, and
 - (ii) is not an agent of Her Majesty in right of the Province;
- (b) "extra-provincial company" means a body corporate that is incorporated otherwise than by or under any Act of Newfoundland or of the Province of Newfoundland;
- (c) "federal company" means an extra-provincial company that is incorporated by or under an Act of the Parliament of Canada; and
- (d) "undertaking" means any business or activity carried on by a domestic company or an extra-provincial company.

(2) For the purposes of this Part, an extra-provincial company is carrying on an undertaking in the province if

- (a) it holds title to any land in the province or has an interest in any such land;
- (b) it maintains an office, warehouse or place of business in the province;

- (c) it is licensed or registered or required to be licensed or registered under any law of the province that entitles it to do business or to sell securities of its own issue;
- (d) it is the holder of a certificate of registration issued under The Highway Traffic Act respecting a public service vehicle; or
- (e) in any other manner it carries on any of its undertakings in the province.

(3) For the purposes of subsection (2), where an extra-provincial company is listed with a number under the name of the extra-provincial company in a telephone directory published by a telephone company for use in this province, that extra-provincial company is presumed, in the absence of proof to the contrary, to be carrying on an undertaking in this province.

Not applicable to co-operatives

430.(1) This Part does not apply to a domestic company or an extra-provincial company that carries on its undertaking on a co-operative basis within the meaning of The Co-operative Societies Act.

(2) For the purposes of this section an agricultural society incorporated pursuant to The Agricultural Societies Act carries on its undertaking on a co-operative basis within the meaning of The Co-operative Societies Act.

Requirement for registration

431.(1) Subject to subsection (3), no domestic company or extra-provincial company shall begin or carry on any undertaking in this province until it is registered under this Act.

(2) A domestic company or extra-provincial company whose name appears on the register maintained by the Registrar pursuant to section 378 is presumed to be registered under this Act and any such company whose name does not appear on that register is presumed not to be registered under this Act.

(3) A domestic company or extra-provincial company registered under the former Act on the commencement of this Act is deemed to be registered.

Manner of
registering

432.(1) In order to be registered under this Act a domestic company must file with the Registrar:

- (a) a list setting out the names, addresses and occupations of all persons who on a day stated for the list, not being more than six clear days before the day of registration, were shareholders of the company, with the total of the shares held by these persons respectively, and distinguishing, if any of the shares are numbered, each share by its number;
- (b) the names of the directors of the company;
- (c) a copy of any statute, certificate or other constating instrument of the company;
- (d) if the company is a limited company, a statement specifying the following particulars:
 - (i) the authorized or stated capital of the company and the number and kind of shares authorized

under its constating instruments,

- (ii) the number of shares issued and the amount paid on each share,
- (iii) the name of the company with the addition of the word or abbreviation "Limited" or "Ltd." or "incorporated" or "Inc." as the last word thereof, and
- (iv) if the company is a company limited by guarantee, a copy of the resolution declaring the amount of the guarantee.

(2) A domestic company may not be registered under this Act until it has paid the prescribed fee therefor.

Registration
of extra-
provincial
company

433.(1) Subject to subsection (2) and to the payment of the prescribed fee therefor, an extra-provincial company may be registered under this Act for any lawful undertaking.

(2) An application for registration under this Act by an federal company may be referred by the Registrar to the Lieutenant-Governor in Council who may order the Registrar to refuse registration.

Restricting
activities

434.(1) The Registrar may, in prescribed circumstances, restrict the powers or activities that an extra-provincial company other than a federal company may exercise or carry on in the province.

(2) When any powers or activities of an extra-provincial company are

restricted under subsection (1), the company shall not exercise those powers or carry on those activities in the province.

(3) Where any powers or activities of an extra-provincial company are to be restricted pursuant to subsection (1),

- (a) the Registrar must notify the company of what he or she intends to do;
- (b) the company may appeal to the Lieutenant-Governor in Council within one month after the day on which the notification from the Registrar is received by the company; and
- (c) the Lieutenant-Governor in Council may confirm, vary or overrule the decision of the Registrar.

Amalgamated
foreign
company

435. An extra-provincial company that has been continued from the amalgamation of two or more extra-provincial companies must comply with section 433 as though it were a new incorporation of an extra-provincial company irrespective of the fact that one or more of the extra-provincial companies continued by the amalgamated company had been registered under this Act at the date of the amalgamation or thereafter.

Requirements
to register

436.(1) In order to register under this Act an extra-provincial company must file with the Registrar a statement in the prescribed form setting out:

- (a) the name of the company;
- (b) the jurisdiction within which the company was incorporated;

- (c) the date of its incorporation;
 - (d) the manner in which it was incorporated;
 - (e) full particulars of its constating instruments;
 - (f) the period, if any, fixed by its constating instruments for the duration of the company;
 - (g) the extent, if any, to which the liability of members of the company is limited;
 - (h) the undertaking that the company will carry on in the province;
 - (i) the date on which the company intends to commence any of its undertakings in the province;
 - (j) the authorized, prescribed and paid-up or stated capital of the company and the shares that 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 the province;
 - (l) the full address of the head office of the company in the province; and
 - (m) the full names, addresses and occupations of the directors of the company.
- (2) The statement must be accompanied by

- (a) a statutory declaration by two directors of the company that verifies on behalf of the company the particulars set out in the statement;
- (b) a copy of the constating instruments of the company;
- (c) the prescribed fee; and
- (d) a power of attorney in accordance with section 438.

Document not
in English

437. When a document that is required to be filed under section 436 is not in the English language, the Registrar may require that a translation of that document be provided which must be notarily certified.

Power of
attorney

438.(1) An extra-provincial company must file with the Registrar a fully executed power of attorney in the prescribed form that will empower some individual named in the power and resident in the province to act as the attorney of the company for the purpose of receiving service of process in all suits and proceedings by or against it in the province and of receiving all lawful notices.

(2) A power of attorney under subsection (1) must declare that service of process in respect of suits and proceedings by or against the company and of lawful notices on the attorney will be binding on the company for all purposes.

(3) An extra-provincial company by another power of attorney executed and deposited in accordance with this section may appoint another attorney in the province for the purposes set forth in the power and to replace the attorney

previously appointed pursuant to this section.

Failure of
power

439. If an attorney named in the power of attorney executed by an extra-provincial company under section 438 ceases to reside in the province or if the power of attorney becomes invalid or ineffectual for any other reason, the company shall file another power of attorney pursuant to section 438.

Capacity of
attorney

440.(1) Service of process and notices on an attorney for an extra-provincial company appointed under a power of attorney registered under section 438 is legal and binding service on the company.

(2) When an attorney for an extra-provincial company appointed under a power of attorney registered under section 438 signs a deed on behalf of the company, the deed is binding on the company in the province if the company has empowered the attorney to execute deeds and the attorney executes it with his or her own seal.

(3) A deed that is binding on an extra-provincial company under subsection (2) has the same effect as if it were under the seal of the company.

Certificate
of registra-
tion

441.(1) When the Registrar has received in respect of an extra-provincial company the statements and other documents required under this Part together with the prescribed fees, but subject to the discretionary power authorized by this Part, the Registrar must

- (a) issue a certificate showing that the company has been registered as an extra-provincial company under this Part; and

(b) publish in the Gazette a notice of the registration of the company as an extra-provincial company.

(2) A certificate of registration under this section in respect of an extra-provincial company is conclusive proof of the registration of that company on the date shown therein and of any other facts that it purports to certify.

Effect of
registration

442. Subject to this Part and any other laws of the province, an extra-provincial company registered under this Act may carry on its undertaking in the province in accordance with its certificate of registration and may exercise its corporate powers within the province.

Saving for
federal
company

443. Nothing in this Part affects the status of a federal company or impairs its capacity to carry on its lawful undertaking in this province.

Suspension or
revocation

444.(1) Subject to such regulations as the Lieutenant-Governor in Council may make in that behalf, the Lieutenant-Governor in Council may suspend or revoke the registration of an extra-provincial company for failing to comply with any requirement of this Part or for other prescribed cause, and the Lieutenant-Governor in Council may remove a suspension or cancel a revocation subject to the regulations.

(2) The rights of creditors of an extra-provincial company are not affected by the suspension or revocation of the registration of that company under this Part.

(3) The Registrar must publish forthwith in the Gazette a notice of any

suspension or revocation of a registration under this Part.

Cancellation
of registra-
tion

445.(1) When an extra-provincial company ceases to carry on any undertaking in the province, the company shall file a notice to that effect with the Registrar who must thereupon cancel the registration of the company.

(2) If an extra-provincial company ceases to exist and the Registrar is made aware of that circumstance by evidence satisfactory to the Registrar, the Registrar may cancel the registration of that company.

(3) If the Registrar is of the opinion that the public convenience will be served thereby, the Registrar may publish in the Gazette a notice of the cancellation of the registration of an extra-provincial company.

Revival of
registration

446.(1) Where the registration of an extra-provincial company has been cancelled under section 445, the Registrar may revive the registration of that company under this Act if the company files with the Registrar such documents as the Registrar may require and pays the prescribed fees.

(2) A registration of an extra-provincial company is revived under this section when the Registrar issues a new certificate of registration to that company.

(3) The Registrar may require the extra-provincial company to whom the Registrar has issued a new certificate under this section to publish in the Gazette at its own expense a notice of the revival of its registration.

Authorization
of previous

447. Registration or revival of registration under this Act of an extra-

activities provincial company retroactively authorizes all previous acts of the company as though the corporation had been registered at the time of those acts, except for the purposes of a prosecution of any offence under this Part.

Displaying
name of
company

448.(1) An extra-provincial company carrying on any undertaking in the province shall, in a conspicuous place and in easily legible letters, paint or affix, and keep painted or affixed, its name on the outside of its head office in the province and every other office or place in which it carries on its undertaking in this province.

(2) An extra-provincial company carrying on any undertaking in the province shall, in the transaction of its undertaking within the province, have the name mentioned in legible characters in

- (a) all notices, advertisements and other official publications of the company;
- (b) 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
- (c) all bills of parcels, invoices, receipts and letters of credit of the company.

Change of
name, etc.

449.(1) Where in the case of an extra-provincial company registered under this Part

- (a) the name of the company has been changed;
- (b) the constating instruments of the company have been altered

to reflect a fundamental change within the meaning of Part XIII; or

- (c) the objects of the company have been altered or its business has been restricted,

the company shall, within one month after such a change has been made, file with the Registrar duly certified copies of the instruments by which the change has been made or ordered to be made.

(2) Upon receipt of the duly certified copies and the prescribed fees, the Registrar must enter the change of name in the register under this Part and enter a record of such other changes in the register as the Registrar considers to be in the public interest.

(3) No registration of an extra-provincial company under this Act is valid sixty days after a change described in subsection (1) is made or ordered unless within that period the change is filed with the Registrar pursuant to subsection (1).

(4) Upon registration of a change in respect of an extra-provincial company under this section, the Registrar must

- (a) issue to the company a certificate of the change under the Registrar's hand in a form adopted to the circumstances; and
- (b) if the change involves a change of name, publish a notice of the change in the Gazette.

(5) A certificate issued under subsection (4) and a notice published in

the Gazette under that subsection are admissible in evidence as conclusive proof of the fact of the change therein stated.

Incapacity
of unregis-
tered com-
pany

450.(1) An extra-provincial company (other than a federal company) that is not registered under this Act may not maintain any action, suit or other proceeding in any court in the province in respect of any contract made in whole or in part within the province in the course of or in connection with the carrying on of any undertaking by the company in the province.

(2) Notwithstanding subsection (1), when an extra-provincial company (other than a federal company) described in that subsection becomes registered under this Act or has its registration restored, as the case may be, the company may then maintain an action, suit or other proceeding in respect of the contract described in subsection (1) as though it had never been disabled under that subsection whether or not the contract was made or proceeding instituted by the company before the date the company was registered or had its registration restored.

(3) In the case of an extra-provincial company (other than a federal company) whose registration has been restored, subsection (2) is subject to the terms of any conditions imposed upon the company or to the terms of any order of the court in respect of the restoration of its registration.

(4) Where an assignment of a debt or any chose in action is made by an extra-provincial company (other than a federal company) described in subsection (1) to an individual or to a body corporate having the capacity to maintain

any action, suit or other proceeding in a court in the province,

- (a) that individual or body corporate, or
- (b) any person claiming through or under the individual or body corporate

may not (unless the Lieutenant-Governor in Council otherwise orders) maintain any action, suit or other proceeding in any court in this province that is based on the subject of the assignment unless the extra-provincial company is registered under this Act during the time the action, suit or other proceeding is being proceeded with.

(5) Subsection (4) does not apply in respect of an extra-provincial company that is a judgment creditor applying to have a judgment registered in the Supreme Court under The Reciprocal Enforcement of Judgments Act.

Resumption of
action upon
registration

451. Where an action, suit or proceeding has been dismissed or otherwise decided against an extra-provincial company on the ground that an act or transaction of the company was invalid or prohibited by reason of the company's not being registered under this Act, the company may, when it becomes registered under this Act and upon such terms as to costs as the court may order, maintain a new action, suit or other proceeding as if no judgment had been given or entered therein.

Prescribed
fees payable

452.(1) Every domestic company and extra-provincial company must pay such fees to the Registrar as the Lieutenant-Governor in Council may by regulations prescribe in respect of registration and other matters under this Part.

(2) The regulations may prescribe different fees for domestic and extra-provincial companies and may provide for a rate of fees based on authorized or stated capital of a company or otherwise.

Application
of other
Parts

453.(1) The following provisions of this Act apply; mutatis mutandis, to extra-provincial companies registered under this Part, namely, the provisions of Parts IX, XVI and XVIII.

(2) The following provisions of this Act apply, mutatis mutandis, to domestic companies registered under this Part, namely, the provisions of Part VI, VII, VIII, IX, XV, XVI and XVII.

PART XXII

INSURANCE CORPORATIONS

Interpretation

454. A word or expression that is defined in section 2 or section 5 of The Insurance Companies Act and used in this Part has the meaning given to it in that Act.

Application
of Part

455. Except where it is expressly otherwise provided, this Part applies to all insurers incorporated before or after the commencement of this Part by or under an Act of Newfoundland or of the Province of Newfoundland.

Approval
of Super-
intendent
of Insurance

456.(1) No articles may be accepted by the Registrar under this Act in respect of an insurer unless the articles are first approved by the Superintendent of Insurance.

(2) This section does not apply to a friendly society, an employee's mutual benefit society or a society, association or organization described in paragraph (b) of section 7 of The Insurance Companies Act.

Filing of
by-law

457. A copy of any by-law of an insurer required to be licensed under The Insurance Companies Act, which must be certified by an officer of the insurer to be a true copy, shall be filed with the Superintendent of Insurance within seven days of the passing of that by-law; and may be disallowed by the Superintendent of Insurance, within one month after its filing with the Superintendent of Insurance, by notice to that effect.

Restriction
on incorporation

458.(1) Subject to subsection (2), (2), when an insurer is empowered

(a) to pay to its members or their beneficiaries as a benefit payable by the insurer, the proceeds of a contingency levy; or

(b) to pay sickness, accident, disability, unemployment, funeral, hospital, medical or dental benefits payable on death or on any contingency dependent on human life, in an amount that is fixed at the discretion of the directors or an executive or management committee of the insurer,

the insurer may not be incorporated under this Act, be revived under this Act or file articles of amendment under this Act.

(2) Subsection (1) does not apply in respect of an application for incorporation, revival or amendment of articles approved by the Superintendent of Insurance in respect of an insurer that is a mutual benefit society or that was licensed under The Insurance Companies Act before the 1st day of April, 1978.

Dissolution of incorporated insurer 459. The Lieutenant-Governor in Council may dissolve an insurer if

- (a) the insurer does not obtain a licence under The Insurance Companies Act within one year of its incorporation;
- (b) the insurer fails to renew the licence under The Insurance Companies Act for a period of one year; or
- (c) the licence of the insurer is cancelled under The Insurance Companies Act.

DIVISION A

SHARE CAPITAL INSURANCE CORPORATIONS

Application 460. This Division applies to every insurer with share capital except mutual insurance corporations.

Incorporation 461. Except as provided in Division B, an insurer with share capital may be incorporated by filing articles of incorporation in the prescribed form, but the articles must state that the business of the incorporation is restricted to the transaction of a particular class or classes of insurance for which the corporation may be licensed under The Insurance Companies Act.

Notice of application 462. Applicants for incorporation must, immediately before the application, publish in at least four consecutive issues of the Gazette notice of their intention so to apply, and must, if so required by the Registrar, publish elsewhere notice of their intention, and must also give at least one month's notice of their intention so to apply to the Superintendent of Insurance.

Capital requirements 463.(1) If the corporation undertakes life insurance, the maximum consideration placed on the issue of shares of the corporation shall not be less than five hundred thousand dollars.

(2) If the corporation undertakes any one or more classes of insurance other than life, the maximum consideration placed on the issue of shares of the corporation shall not be less than three hundred thousand dollars.

Subscribed capital 464.(1) All money received on account of shares shall be paid into a branch or agency in the province of a chartered bank or to a trust corporation licensed under The Trust and Loan Companies (Licensing) Act, 1974, in trust for the proposed corporation; and no money paid on account of shares, before the first general meeting of the corporation is organized may be withdrawn or paid over to the corporation until after that meeting and the election of directors.

(2) Every subscription for shares made prior to the granting of a licence under The Insurance Companies Act must contain the stipulation that all moneys received on account of shares will be returned to the subscribers without any deduction for promotion, organization, or other expenses, in case the insurer fails to procure a licence.

(3) Every subscription for shares must contain the stipulation that no sum will be used or paid before or after incorporation, for commission, promotion or organization expenses in excess of a percentage of the amount of money received on account of shares being no more than fifteen percent thereof.

DIVISION B

MUTUAL INSURANCE CORPORATIONS

- Application 465. This Division applies to every corporation incorporated for the purpose of undertaking contracts of mutual insurance.
- Incorporation of mutual companies 466. A mutual insurance corporation without share capital may be incorporated by filing articles of incorporation in the prescribed form, but the articles must state that the undertaking of the corporation is restricted to the sole purpose of undertaking contracts of mutual insurance.
- Name 467. The name of a mutual insurance corporation must include the word "Mutual" and the word "Insurance" or "Assurance".
- Subscription book 468. If twenty-five or more persons, each having an insurance interest in property of a kind to be insured in a proposed corporation, are present at a meeting, and a majority of them determine that it is expedient to establish a mutual insurance corporation, they may elect from among themselves three persons to open and keep a subscription book in which owners of that property within the province may sign their names and addresses and enter the sum for which they respectively bind themselves to effect insurance with the corporation, giving the description and location of the property to be insured.
- First meeting 469.(1) When the subscription has been completed and the aggregate amount subscribed is not less than fifty thousand dollars, any ten of the subscribers may call the first meeting of the proposed corporation, at such time and place as they determine, by advertisement and by sending a printed notice by

mail, addressed to every subscriber at the subscriber's post office address, at least ten days before the day of the meeting.

(2) The notice and advertisement must state the object of the meeting and the time and place at which it is to be held.

Directors,
etc.

470. At the meeting, or at any adjournment thereof, the name and style of the corporation must be adopted, a secretary ad interim must be appointed, directors elected, and a central and generally accessible place within the province named at which the registered office of the company is to be located.

Application
for incorpor-
ation

471.(1) With the articles of incorporation, the applicants must produce to the Registrar, certified as correct under the hands of the chairman and secretary

- (a) a copy of the minutes of the meeting, including all resolutions respecting the business of the proposed corporation, its name or style, and the location of its registered office;
- (b) a copy of the subscription book;
- (c) a list showing the names and addresses of the directors elected and of the officers appointed; and
- (d) such other information as the Registrar may require.

(2) The applicants must produce for verification to the Registrar, if requested, the originals of the documents required under subsection (1).

Members

472.(1) Any person who being insured under a policy issued on the mutual plan by a corporation gives the corporation a premium note is, from the date upon which the insurance becomes effective, a member of the corporation.

(2) No member is liable in respect of any loss or claim or demand against the corporation beyond the amount unpaid upon the member's premium note.

Withdrawal
from mutual

473.(1) Any member of a mutual insurance corporation may, with the consent of the directors, withdraw from the corporation upon such terms as the directors lawfully prescribe.

(2) Upon the withdrawal a member's policy is cancelled, but the member is nevertheless liable to be assessed for, and to pay, his or her proportion of the losses, expense, and reserve to the time of cancellation of the policy.

(3) On the payment of the amount payable to the mutual insurance company by a member at the time of his or her withdrawal, the member is entitled to a return of his or her premium note.

Effect of
cash plan
insurance

474. No insurance on the wholly cash plan makes the insured a member, or liable to contribute or pay any sum to a mutual insurance corporation, or to its funds, or to any other member thereof, beyond the cash premium agreed upon, or gives the insured any right to participate in the profits or surplus funds of the corporation.

Voting

475.(1) Each member of a mutual insurance corporation is entitled at all meetings of the corporation to a number of votes in proportion to the amount by the member insured, as follows:

- (a) an amount under \$1,500.00, one vote;
- (b) any amount from \$1,500.00 to \$3,000.00, two votes;
- (c) any amount from \$3,000.00 to \$6,000.00, three votes; and
- (d) every additional \$3,000.00 over \$6,000.00, one vote.

(2) Notwithstanding subsection (1), the corporation may provide by its articles or by-laws that each member is entitled to one vote only at its meetings.

(3) No member is entitled to vote while that member is in arrears for any assessment or premiums due from the member to the corporation.

Vote where
two or more
persons

476. Where a policy on the mutual plan is issued to two or more persons, one only is entitled to vote, and the right of voting belongs to the one first named on the register of policyholders if that person is present, and if not present, to the one who stands second, and so on.

Vote of
trustee
member

477. Where property is insured by a trustee board or a body corporate, any person duly appointed in writing pursuant to its resolution may vote on its behalf.

Quorum

478. At all meetings of the corporation twelve members actually present in person constitute a quorum.

Persons
eligible as
directors

479.(1) No person is eligible to be, nor may any person act as a director of a mutual insurance corporation unless that person is a member of the corporation and insured therein, for the time

that person holds office, to the amount of not less than two thousand dollars.

(2) The president or director of a body corporate that has the qualifications that would qualify an individual to be a director of a mutual insurance corporation is eligible to be a director of the mutual insurance corporation.

(3) Where a partnership has the qualifications that would qualify an individual to be a director of a mutual insurance corporation, one member of the partnership is eligible to be a director of the mutual insurance corporation.

Treasurer

480. The treasurer or other officer having charge of the money of a mutual insurance corporation must give security to the satisfaction of the directors of the corporation, in a sum of not less than two thousand dollars, for the faithful discharge of his or her duties.

Meeting of directors

481. The directors must hold a meeting at least every three months for transacting the business of the corporation.

Assets

482. All the securities, promissory notes and bills of exchange of a mutual insurance corporation at any one time outstanding shall not exceed one half of the amount remaining unpaid upon the premium notes of the corporation.

Establishment of branches

483. Any mutual insurance corporation may separate its business into branches or departments, with reference to the nature or classification of risks or of the localities in which insurance is or is to be effected.

Rates

484. The directors of every mutual insurance corporation separating its business as described in section 483

shall make a scale of risks and tariffs of rates for each branch or department, and direct that the amounts of each be kept separate and distinct the one from the other.

Liability
of branch
members

485. Members insuring in one branch of a mutual insurance corporation are not liable, and may not be assessed, for claims in any other branch or department; but this section is not to be construed to apply to any reserve fund of the corporation.

Expenses
divided

486. All necessary expenses incurred in the conduct and management of a mutual insurance corporation must be assessed upon and divided among the several branches or departments in such proportion as the directors determine.

DIVISION C

BENEVOLENT CORPORATIONS

Application

487. This Division applies to every corporation without share capital the undertaking of which is restricted by its articles to that of a fraternal society, a mutual benefit society, an employee's mutual benefit society, or a society, association or organization described in paragraph (b) of section 7 of The Insurance Companies Act.

Incorporation

488. A corporation without share capital may be incorporated by filing articles of incorporation in the prescribed form; but the articles must state that the undertaking of the corporation is restricted to the sole purpose of carrying on, pursuant to the provisions of The Insurance Companies Act, the business of a society, association or organization mentioned in section 487.

- Investments 489. The corporation shall not invest its funds otherwise than in securities authorized for investment by insurers under The Insurance Companies Act.
- Limit on benefits 490. The corporation may limit any insurance or benefits to such class or classes of persons as its rules determine, notwithstanding the provisions of any other statute or law to the contrary, unless the other statute is declared specifically to apply to corporations to which this Division applies.
- Borrowing power 491. For the purposes of carrying out its undertaking a corporation may borrow or raise or secure the payment of money in such manner as it thinks fit, and in particular by the issue of bills of exchange or debt obligations; but that power may be exercised only under the authority of its rules, and in no case may debt obligations be issued without the sanctions of a special resolution and, in the case of a corporation required to be licensed under The Insurance Companies Act undertaking an insurance business, the approval of the Superintendent of Insurance.
- Treasurer 492. The treasurer or other officer having charge of the money of the corporation must give security to the satisfaction of the directors, in a sum that in the opinion of the directors is adequate, but in no case less than two thousand dollars, for the faithful discharge of his or her duties.
- Disputes 493.(1) Unless the rules of the corporation otherwise provide, any dispute arising out of the affairs of the corporation between any members thereof or between a member or any person aggrieved who has not more than six months before ceased to be a member, or any person claiming through that member

or person aggrieved or claiming under the rules, and the corporation or a director or officer thereof, must be decided by arbitration pursuant to The Judicature Act.

(2) The decision made under arbitration or as prescribed by the rules is binding on all parties, and may be enforced on application to the court, and unless the rules otherwise provide, there is no appeal from that decision.

PART XXIII

TRUST, LOAN & INVESTMENT CORPORATIONS

Application

494. This Part applies to a body corporate that intends to carry on or carries on the undertaking of

- (a) a trust company as defined in The Trust and Loan Companies (Licensing) Act, 1974;
- (b) a loan company as defined in The Trust and Loan Companies (Licensing) Act, 1974; and
- (c) an issuer of investment contracts within the meaning of The Investment Contracts Act.

Approval
required

495. An application for the incorporation or continuance as a corporation of a body corporate to which this Part applies must be first approved by the Superintendent of Insurance.

Prohibition

496. The articles of incorporation or continuance of a body corporate to which this Part applies must set out such restrictions on the business of the corporation thereby incorporated or continued as the Superintendent of Insurance may require by his approval under section 495.

Appeal

497. The Superintendent of Insurance shall refer an application by a body corporate to which this Act applies for an approval under section 495 if the Superintendent of Insurance refuses his or her approval, to the Lieutenant-Governor in Council who may refuse the application in which case the body corporate as incorporated or continued under this Act may not be licensed under any Act mentioned in section 494 to carry on an undertaking described in that section.

PART XXIV

OFFENCES AND PENALTIES

Name of
corporation

498. Subject to subsection (2) of section 20, a corporation that contravenes section 20 is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars.

Abusing
corporate
designation

499. A natural person who carries on business under a name part of which is "Limited", "Limitee", "Incorporated", "Incorporee" or "Corporation", or the abbreviation "Ltd.", "Ltee.", "Inc.", or "Corp." is guilty of an offence and liable on summary conviction to a fine not exceeding five hundred dollars.

Failure to
protect
records

500. A person who without reasonable cause contravenes section 43, is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding six months or to both that fine and that imprisonment.

Mis-use of
shareholders
lists

501. A person who without reasonable cause contravenes section 47 is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars and to impris-

onment for a term not exceeding six months or to both that fine and that imprisonment.

Offences
with respect
to reports

502.(1) A person who makes or assists in making a report, return, notice or other document required by this Act or the regulations to be sent to the Registrar or to any other person

- (a) that contains an untrue statement of a material fact; or
- (b) that omits to state a material fact required therein or necessary to make a statement contained therein not misleading in the light of the circumstances in which it was made,

is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding six months or to both that fine and that imprisonment.

(2) A person is not guilty of an offence under subsection (1) if the making of the untrue statement or the omission of the material fact was unknown to that person and in the exercise of reasonable diligence could not have been known to that person.

(3) When an offence under subsection (1) is committed by a body corporate and a director or officer of that body corporate knowingly authorized, permitted or acquiesced in the commission of the offence, the director or officer is also guilty of the offence and liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding six months or to both that fine and that imprisonment.

Mis-use of
security
holders
lists

503. A person who without reasonable cause contravenes subsection (5) of section 145 is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding six months or to both that fine and that imprisonment.

Failure to
send proxy
form

504.(1) Where management of a corporation without reasonable cause fails to comply with subsection (1) of section 246, that corporation is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars.

(2) When a corporation is guilty of an offence under this section, then, whether or not the corporation has been prosecuted or convicted, any director or officer of the corporation who knowingly authorized, acquiesced or permitted the failure to comply with subsection (1) of section 246 is also guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding six months or to both that fine and that imprisonment.

Unlawfully
soliciting
proxies

505.(1) A person who contravenes section 247 or 248 is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding six months or to both that fine and that imprisonment.

(2) If the person guilty of an offence under subsection (1) is a body corporate, then, whether or not the body corporate has been prosecuted or convicted, any director or officer of the body corporate who knowingly authorized, permitted or acquiesced in that offence is also guilty of an offence and liable on summary conviction to a fine not

exceeding five thousand dollars or to imprisonment for a term not exceeding six months or to both that fine and that imprisonment.

Failure to
comply with
proxy
directions

506. A person who, being a proxyholder or alternate proxyholder, fails, without reasonable cause, to comply with the directions of a shareholder under paragraph (b) of subsection (1) of section 250 is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding six months or to both that fine and that imprisonment.

Default of
registrant
to vote
shares

507.(1) A registrant who knowingly contravenes any provision of section 251 is guilty of an offence and liable on summary conviction to a fine not exceeding six months or to both that fine and that imprisonment.

(2) If the registrant who is guilty of an offence under subsection (1) is a body corporate, then, whether or not the body corporate has been prosecuted or convicted, any director or officer of the body corporate who knowingly authorized, permitted or acquiesced in the contravention is also guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding six months or to both that fine and that imprisonment.

Failure to
send finan-
cial state-
ments

508. A corporation that without reasonable cause contravenes section 258 is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars.

Failure to
send finan-
cial docu-
ments to

509. A corporation that without reasonable cause contravenes a provision of section 259 is guilty of an offence and liable on summary conviction to a

Registrar fine not exceeding five thousand dollars.

Default of auditor 510. An auditor or former auditor of a corporation who without reasonable cause contravenes subsection (1) of section 268 is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding six months or to both that fine and that imprisonment.

Director's default re financial errors 511. A director or officer of a corporation who knowingly contravenes a provision of section 273 is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding six months or to both that fine and that imprisonment.

Failure to produce records 512. A person described section 350 who without reasonable excuse fails to produce any document or record within any period during which the person is liable under that section to produce any such document or record is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding six months or to both that fine and that imprisonment.

Failure to report on ownership 513.(1) A person who without reasonable excuse fails to comply with a requirement of the Registrar under section 360 to report to the Registrar any information or any names or addresses of persons sought by the Registrar under that section is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding six months or to both that fine and that imprisonment.

(2) When a person who is guilty of an offence under subsection (1) is a body corporate, then, whether or not the body corporate has been prosecuted or convicted, any director or officer of the body corporate who knowingly authorized, permitted or acquiesced in that failure is also guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding six months or to both that fine and that imprisonment.

General offences and penalty

514.(1) Every person who is guilty of an offence under this Act for which no penalty is specifically provided is liable on summary conviction to a fine not exceeding five hundred dollars.

(2) Every person who without reasonable cause contravenes a provision of the regulations is guilty of an offence and is liable on summary conviction to a fine not exceeding five hundred dollars.

Order to comply

515. Where a person is guilty of an offence under this Act or the regulations, any court in which proceedings in respect of the offence are taken may, in addition to any punishment it may impose, order that person to comply with the provisions of this Act or the regulations for the contravention of which that person has been convicted.

Time limited for proceedings

516. A prosecution for an offence under this Act may be instituted at any time within two years from the time when the subject matter of the complaint arose.

Civil remedy not affected

517. No civil remedy for an act or omission is suspended or affected by reason that the act or omission is an offence under this Act.

PART XXV

INCIDENTAL AND CONSEQUENTIAL MATTERS

- Rep. of RSN
1970 c.54 518. The Companies Act is repealed.
- Rep. of RSN
1970 c.310 519. The Property of Dissolved Corporations (Vesting) Act is repealed.
- Scheduled
amendments 520. The Acts designated in Column I of the Schedule are amended in the manner and to the extent described in Column 2 of that Schedule.
- References
to Companies
Act 521.(1) In this section and section 522,
- (a) "enactment" means an Act or regulation or any portion of an Act or regulation; and
 - (b) "regulation" includes an order, regulation, order-in-council, order prescribing regulations, rule of court, form, tariff of costs or fees, letters patent, commission, warrant, instrument issued, made, or established
 - (i) in the execution of a power conferred by or under an Act other than The Companies Act, or
 - (ii) by or under the authority of the Lieutenant-Governor in Council.
- (2) A reference in an unrepealed enactment to The Companies Act must, as regards a transaction, matter or thing subsequent to the commencement of this Act, be construed and applied, unless the context otherwise requires, as a reference to the provisions of this Act that relate to the same subject-matter

as the provisions of The Companies Act referred to in the unrepealed enactment; but if there are no provisions in this Act that relate to the same subject-matter, The Companies Act must be construed and applied as unrepealed in so far as it is necessary to maintain or give effect to the unrepealed enactment.

(3) Subsection (2) does not apply in respect of any of the sections in the enactments specifically amended in Column 2 of the Schedule.

Transitional provisions

522.(1) Where in any enactment the expression "registered under The Companies Act" occurs, the expression, unless the context otherwise requires, is amended to read "incorporated, continued or registered under The Corporations Act" in respect of all transactions, matters or things subsequent to the commencement of this Act.

(2) Where in any enactment a reference is made to winding-up under, or to the winding-up provisions of, The Companies Act, the reference, unless the context otherwise requires, must be read, in respect of all transactions, matters or things subsequent to the commencement of this Act, as a reference to liquidation and dissolution under Part XV of this Act.

(3) This section does not apply in respect of any of the sections in the enactments specifically amended in Column 2 of the Schedule.

Effect of repeal

523.(1) Notwithstanding section 518, when on the commencement of this Act any proceedings under Part IV of The Companies Act are pending in respect of the winding-up of any company under that Act, those proceedings may be continued under that Part in all respects as if

this Act had not been enacted and The Companies Act had not been repealed.

(2) When on the commencement of this Act an amalgamation agreement entered into under The Companies Act and approved by the court under section 30 of that Act is in course of being filed with the Registrar of Companies or is in the hands of the Registrar of Companies, the amalgamation may be continued and effected under section 30 of that Act as if this Act had not been enacted and The Companies Act had not been repealed unless the parties thereto withdraw the amalgamation agreement by notice in writing.

Commencement

524. This Act comes into force on the 1st day of January 1987.

SCHEDULE

(Section 520)

CONSEQUENTIAL AMENDMENTS

Designated Act	Amendment
1. The Assignment of Book Debts Act RSN 1970 c. 15	<p>Paragraph (e) of section 2 is amended by striking out the words "<u>The Companies Act of Newfoundland</u>" and substituting the words "<u>The Companies Act or The Corporation Act</u>".</p> <p>Section 2A is repealed and the following substituted:</p> <p style="padding-left: 40px;">"2.1 This Act shall be read with section 451 of <u>The Corporations Act</u>."</p>
2. The Automobile Dealers Act, 1973	<p>Subsection (4) of section 19 is amended by striking out the words "<u>The Companies Act</u>" and substituting the words "<u>The Corporations Act</u>".</p>
3. The Bills of Sale Act RSN 1970 c. 21	<p>Paragraph (e) of section 2 is amended by striking out the words "<u>The Companies Act</u>" and substituting the words "<u>The Companies Act or The Corporations Act</u>".</p>
4. The Building Contractors (Licensing) Act RSN 1970 c. 26	<p>Subsection (3) of section 8 is repealed and the following substituted:</p> <p style="padding-left: 40px;">"(3) The Registrar shall not issue a licence to a body corporate that has not been incorporated or</p>

Designated Act	Amendment
	registered under <u>The Corporations Act.</u> "
5. The Collections Act 1984 c. 34	Subsection (4) of section 19 is amended by striking out the words " <u>The Companies Act</u> " and substituting the words " <u>The Corporations Act</u> ".
6. The Conditional Sales Act RSN 1970 c. 56	Paragraph (g) of section 2 is amended by striking out the words " <u>The Companies Act</u> " and substituting the words " <u>The Companies Act</u> or <u>The Corporations Act</u> ".
7. The Condominium Act RSN 1970 c. 57	Subsection (8) of section 13 is amended by striking out the words " <u>The Companies Act</u> " and substituting the words " <u>The Corporations Act</u> ".
8. The Co-operative Societies Act RSN 1970 c. 65	Subsection (1) of section 71 is amended by striking out the words " <u>The Companies Act</u> for the time being in force" and substituting the words " <u>The Corporations Act</u> ".
	Subsection (3) of section 71 is amended
	(i) by striking out the words " <u>The Companies Act</u> for the time being in force" and substituting the words " <u>The Corporations Act</u> ", and
	(ii) by striking out the words " <u>The Companies Act</u> " and substituting the words " <u>The Corporations Act</u> ".

Designated Act	Amendment
9. The Consumer Reporting Agencies Act 1977 c. 18	Paragraph (e) of subsection (1) of section 15 is amended by striking out the words " <u>The Companies Act</u> " and substituting the words " <u>The Corporations Act</u> ".
10. The City of St. John's Act RSN 1970 c. 40	Section 2 of Schedule A is amended by striking out the words "under <u>The Companies Act</u> " and substituting the words "or continued or incorporated under <u>The Corporations Act</u> ".
11. The Fisheries Loan Act RSN 1970 c. 134	Paragraph (c) of section 2 is amended by striking out the words "under <u>The Companies Act of Newfoundland</u> " and substituting the words "or continued under <u>The Corporations Act</u> ".
12. The Hospitals Act, 1971 1971 No. 81	Paragraph (j) of section 2 is amended by adding the words "or articles of incorporation under <u>The Corporations Act</u> " after the words " <u>The Companies Act</u> ".
13. The Housing Act RSN 1970 c. 160	Paragraph (a) of subsection (1) of section 13 is repealed and the following substituted: "(a) incorporate a company under <u>The Corporations Act</u> , with such restrictions on the business that it may carry on as the Lieutenant-Governor in Council approves as well as render the company eligible to apply

 Designated Act

 Amendment

for and receive, as a non-profit corporation as defined by the federal Act, loans under section 15 or 15.1 of the federal Act for low-rental housing purposes, and the maximum aggregate consideration for the shares of the company shall be such amount as the Lieutenant-Governor in Council approves;".

All that portion of paragraph (b) of subsection (1) of section 13 following subparagraph (iii) is repealed and the following substituted:

"in incorporating a company under The Corporations Act, with such restrictions on the business it may carry on as the Lieutenant-Governor in Council approves and as will render the company eligible to apply for and receive, as a public agency as defined by section 41 of the federal Act, loans under sections 42 and 43 of the federal Act for low rental housing purposes, and the maximum aggregate consideration for the shares of the company shall be such amount as the Lieutenant-Governor in Council approves;".

Designated Act

Amendment

Paragraph (b) of subsection (4) of section 13 is repealed and the following substituted:

"(b) voted, as the Lieutenant-Governor in Council directs, in accordance with the articles and by-laws of the company and The Corporations Act".

Paragraph (b) of subsection (5) of section 13 is repealed and the following substituted:

"(b) voted, as directed by the municipal authority, in accordance with the articles and by-laws of the company and The Corporations Act".

Subsection (6) of section 13 is amended

(a) by striking out the words "The Companies Act", and substituting the words "The Corporations Act"; and

(b) by striking out the words "and the membership of the company shall, at all times and howsoever the shares therein are held as aforesaid, be deemed to be not less than three".

Designated Act	Amendment
14. The Industrial and Provident Societies Act RSN 1970 c. 167	<p>Paragraph (c) of section 2 is repealed.</p> <p>Paragraph (k) of section 2 is amended by striking out the words "<u>The Companies Act</u>" and substituting the words "<u>The Corporations Act</u>".</p> <p>Paragraph (c) of subsection (1) of section 28 is amended by striking out the words "<u>The Companies Act</u>" and substituting the words "<u>The Corporations Act</u>".</p> <p>Subsection (2) of section 28 is amended by striking out the words "<u>The Companies Act</u>" and substituting the words "<u>The Corporations Act</u>".</p> <p>Subsection (1) of Section 40 is amended by striking out the words "a company under <u>The Companies Act</u>" and substituting the words "a corporation under <u>The Corporations Act</u>".</p> <p>Subsection (2) of section 40 is repealed and the following substituted:</p> <p>"(2) If a special resolution for converting a registered society into a corporation under <u>The Corporations Act</u> contains the particulars required by that Act to be contained in the articles of continuation, a certificate of continuance under that Act issued by the Registrar</p>

Designated Act	Amendment
	<p>of Corporations has the effect of continuing the registered society as a corporation under that Act."</p> <p>Subsection (3) of section 40 is amended by striking out the words "a company" wherever they occur and substituting in each case the words "a corporation".</p> <p>Section 41 is repealed.</p> <p>Paragraph (a) of section 44 is amended by striking out the words "companies by <u>The Companies Act</u>" and substituting the words "corporations under <u>The Corporations Act</u>".</p>
<p>15. The Insurance Companies Act RSN 1970 c. 176</p>	<p>Paragraph (ff) of section 2 is amended by striking out the words "<u>The Companies Act</u>" and substituting the words "<u>The Corporations Act</u>".</p> <p>Subparagraph (iv) of paragraph (b) of subsection (2) of section 16 is amended by striking out the words "<u>The Companies Act</u>" and by substituting the words "<u>The Corporations Act</u>".</p> <p>Subparagraph (vii) of paragraph (c) of subsection (2) of section 16 is amended by striking out the words "<u>The Companies Act</u>" and by substituting the words "<u>The Corporations Act</u>".</p>

Designated Act	Amendment
	Subsection (5) of section 16 is amended by striking out the words "with the Registrar of Companies under <u>The Companies Act</u> " and substituting the words "under <u>The Corporations Act</u> ".
	Subsection (3) of section 54 is amended by striking out the words " <u>The Companies Act</u> " and substituting the words " <u>The Corporations Act</u> ".
	Section 55 is amended by striking out the words " <u>The Companies Act</u> " wherever they occur in subsections (1), (3) and (4) thereof and substituting the words " <u>The Corporations Act</u> ".
	Subsection (1) of section 57 is amended by striking out the words " <u>The Companies Act</u> " and substituting the words " <u>The Corporations Act</u> ".
	Subparagraph (iii) of paragraph (a) of subsection (2) of section 58 is amended by striking out the words " <u>The Companies Act</u> " and substituting the words " <u>The Corporations Act</u> ".
	Subsection (1) of section 59 is amended by striking out the words " <u>The Companies Act</u> " and substituting the words " <u>The Corporations Act</u> ".
	Paragraph (d) of subsection

Designated Act	Amendment
	(1) of section 62 is amended by striking out the words " <u>The Companies Act</u> " and substituting the words " <u>The Corporations Act</u> ".
16. The Insurance Contracts Act RSN 1970 c. 178	Paragraph (a) of subsection (2) of section 23 is amended by striking out the words "Section 271 of <u>The Companies Act</u> " and substituting the words "section 439 of <u>The Corporations Act</u> ".
17. The Investment Contracts Act RSN 1970 c. 184	Paragraph (c) of subsection (1) of section 6 is repealed and the following substituted: "(c) unless it has been registered under <u>The Corporations Act</u> ;"
18. The Judgment Recovery (Nfld.) Act RSN 1970 c. 186	Section 20 is amended by striking out the words " <u>The Companies Act</u> " and substituting the words " <u>The Corporations Act</u> ".
19. The Limited Partnership Act, 1983 1983 c. 47	Paragraph (f) of section 2 is amended by striking out the words " <u>The Companies Act</u> " and by substituting the words " <u>The Corporations Act</u> ".
20. The Loan Companies & Finance Companies (Licensing Act) RSN 1970 c. 213	Subsection (2) of section 8 is amended by striking out the words "with the Registrar of Companies under <u>The Companies Act</u> " and substituting the words "under <u>The Corporations Act</u> ".

Designated Act	Amendment
21. The Mortgage Brokers Act, 1976 1976 No. 49	Paragraph (c) of section 6 is amended by striking out the words " <u>The Companies Act</u> " and substituting the words " <u>The Corporations Act</u> ".
22. The Newfoundland and Labrador Development Corporation Ltd. (Agreement) Act, 1973 1973 No. 105	<p>Section 5 is amended</p> <p>(i) by striking out the words "under <u>The Companies Act</u>",</p> <p>(ii) as to subsection (2) thereof, by striking out the words "Memorandum and Articles of the Corporation, <u>The Companies Act</u> and any other law" and substituting the words "the articles of association, by-laws or unanimous shareholders agreement or <u>The Corporations Act</u>",</p> <p>(iii) by adding at the end thereof the following:</p> <p style="padding-left: 40px;">"(4) Subsection (3) is repealed when the corporation files articles of continuance under <u>The Corporations Act</u>."</p>
23. The Newfoundland Consumer Protection Act	<p>Section 6 is amended by adding after the words "<u>The Companies Act</u>" where they occur the words "and <u>The Corporations Act</u>".</p> <p>Subsection (4) of section 15 is amended by striking out the words "<u>The Companies Act</u>" and</p>

Designated Act	Amendment
RSN 1970 c. 256	substituting the words " <u>The Corporations Act.</u> ".
24. The Registration of Deeds Act RSN 1970 c. 328	Section 10A is amended by striking out the words "a dominion or foreign company within the meaning of <u>The Companies Act</u> " and substituting the words "an extra-provincial company within the meaning of <u>The Corporations Act</u> ".
25. The Securities Act RSN 1970 c. 349	<p>Paragraph (a) section 5 is amended by adding after the words "<u>The Companies Act</u>" the words "<u>or The Corporations Act</u>".</p> <p>Subsection (3) of section 11 is amended by striking out the words "<u>The Companies Act</u>" and substituting the words "<u>The Corporations Act</u>".</p> <p>Paragraph (a) of section 20 is amended by adding after the words "<u>The Companies Act</u>" the words "<u>or The Corporations Act</u>".</p> <p>Subparagraph (ii) of paragraph (e) of subsection (1) of section 26 is amended by striking out the words "<u>The Companies Act</u>" and substituting the words "<u>The Corporations Act</u>".</p>
26. The Stamp Act RSN 1970 c. 361	<p>Paragraph (c) of section 6 is repealed and the following substituted:</p> <p>"(c) <u>The Corporations Act</u>;".</p>

Designated Act	Amendment
27. The Workers' Compensation Act, 1983 1983 c. 48	Subsection (1) of section 110 is amended by striking out the words " <u>The Companies Act</u> " and substituting the words " <u>The Corporations Act</u> ".



CHAPTER 13

AN ACT TO AMEND THE FARM DEVELOPMENT LOAN
ACT

(Assented to June 17, 1986)

Analysis

Section:

1. S.11.1 Added
Payment to Consolidated
Revenue Fund

Be it enacted by the Lieutenant-Governor and House of
Assembly in Legislative Session convened, as follows:

RSN 1970
c.125 as
amended

1. The Farm Development Loan Act
is amended by adding immediately after
section 11 the following:

Payment to
Consolidated
Revenue
Fund

"11.1 Notwithstanding any
other provision of this Act, the
chairman of the board shall pay
into the Consolidated Revenue Fund
out of the fund such moneys, at
such intervals and in such a manner
as the Lieutenant-Governor in
Council may by order direct."



CHAPTER 14

AN ACT TO AMEND THE REAL ESTATE TRADING ACT TO PROVIDE FOR THE ESTABLISHMENT OF THE REAL ESTATE FOUNDATION

(Assented to June 17, 1986)

Analysis

Section:

- 1. Part I
- 2. S.28(1) R&S. Trust account
- 3. Sections Added
 - PART II
 - Real Estate Foundation
 - S.49 Definition
 - S.50 Foundation established
 - S.51 Composition of Board
 - S.52 Vacating office on Board
 - S.53 Objects of Foundation

Section:

- S.54 Fund
- S.55 Foundation may receive gifts
- S.56 Powers of Board
- S.57 Audit and report
- S.58 Trust money
- S.59 Non-compliance of agent
- S.60 Agent not liable to client
- S.61 Client's money not affected
- S.62 Dissolution of Foundation
- S.63 Commencement

Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

RSN 1970
c. 326
as amended

- 1. The Real Estate Trading Act is amended by inserting immediately after section 2 the following:

"Part I".

- 2. Subsection (1) of section 28 of the Act is repealed and the following substituted:

"28.(1) An agent shall maintain at least one interest-bearing trust account of a type approved by the Superintendent in a financial institution that is authorized to receive money on deposit.

(1.1) Subsection (1) comes into force on the day Part II comes into force."

3. The said Act is amended by adding immediately after section 48 the following:

"PART II

Real Estate Foundation

Definition

49. In this Part "Minister" means the Minister of Consumer Affairs and Communications.

Foundation
established

50. There is hereby established a corporation to be known as the Real Estate Foundation, in this Part called the "Foundation".

Composition
of Board

51.(1) The Foundation shall be administered by a board of governors, in this Part called the "Board".

(2) The members of the Board shall be appointed by the Minister as follows:

- (a) one person who is an employee of the Department of Consumer Affairs and Communications;
- (b) a person who is not licensed under this Act who shall represent the public at large; and

(c) three persons licensed under this Act and engaged in real estate trading.

(3) The Minister shall designate one of the persons appointed pursuant to paragraph (c) of subsection (2) as chairperson of the Board.

(4) Each person shall be appointed to the Board for a period of three years and is eligible for re-appointment.

(5) Notwithstanding subsection (4), the Minister, in making the first appointments of the persons referred to in paragraph (c) of subsection (2), shall appoint two of the persons for a two year period and one of the persons for a three year period.

(6) Where a vacancy occurs on the Board, the Minister may appoint a replacement and the appointment of the replacement shall be made so as to reflect the composition of the Board as set out in subsection (2).

(7) A person appointed to fill a vacancy shall be appointed for the remainder of the term of office of the person who vacated it or until a successor is appointed.

(8) Three members of the Board, at least one of whom is a member appointed pursuant to paragraph (a) or (b) of subsection (2), constitute a quorum.

(9) No act of the Board is invalid because a defect is after-

wards found in the appointment of one of its members.

Vacating
office on
Board

52.(1) A person appointed to the Board shall vacate the office thereon if

- (a) the person ceases to hold the qualifications necessary for the appointment;
- (b) the person becomes bankrupt;
- (c) the person is convicted of a criminal offence; or
- (d) the person is unable to act for any reason.

(2) A person appointed to the Board may resign from the Board upon giving one month's notice to the Board of an intention to do so, and the resignation takes effect upon the expiry of that period or upon its earlier acceptance by the Board.

Objects of
Foundation

53. The objects of the Foundation are to establish and maintain a fund and to use the proceeds thereof for the following purposes:

- (a) to promote continuing education among those engaged in real estate trading;
- (b) to sponsor, support and promote research and to make recommendations affecting real estate trading; and

- (c) to do all other things that are, in the opinion of the Foundation, incidental or conducive to the attainment of the objects set forth above.

Fund

54. The fund of the Foundation shall be comprised of

- (a) the monies paid to the Foundation from interest accruing from interest bearing accounts maintained by agents pursuant to section 28;
- (b) interest accruing from investments of the Foundation;
- (c) monies received by the Foundation by way of gift, bequest or devise; and
- (d) monies resulting from the use, disposal or investment of property of the Foundation or received by the Foundation from any other source.

Foundation
may receive
gifts

55.(1) The Foundation has the power to receive gifts, bequests and devises of property, real or personal, and to hold, use or dispose of that property in furtherance of the objects of the Foundation, subject to the terms of a trust affecting the property.

(2) Any form of words is sufficient to constitute a gift, bequest or devise to the Foundation so long as the person making the

gift, bequest or devise indicates an intention to contribute to the Foundation.

Powers of
Board

56.(1) The Board may

- (a) pay, out of the funds of the Foundation, the costs, charges, audit and other fees and expenses involved in the administration and operation of the Foundation;
- (b) appoint, employ or otherwise retain persons to carry out the objects of the Foundation;
- (c) acquire, hold, mortgage, dispose of and otherwise deal with real and personal property in the name and for the objects of the Foundation; and
- (d) make by-laws respecting the administration of its affairs, funds and property and respecting any other matter that relates to the powers and purposes of the Foundation or that is incidental thereto.

(2) All monies of the Foundation shall, pending their investment or application in accordance with this section, be paid to a financial institution authorized to receive money on deposit to the credit of the Foundation.

(3) Monies that are not immediately required for the purposes of the Foundation may be

invested in the name of the Foundation by the Board in a manner in which trustees are authorized by law to invest trust funds.

Audit and
report

57.(1) The accounts of the Foundation shall be audited annually by a chartered accountant appointed for this purpose by the Board and the chartered accountant shall report to the Foundation and to the Superintendent.

(2) The Board shall report to the Superintendent from time to time or when requested by the Superintendent and shall present an annual report to the Minister.

Trust money

58.(1) Every financial institution authorized to receive money on deposit that holds money in trust for an agent as provided for in section 28 and that credits an agent with interest on that money shall remit to the Foundation all of those interest monies.

(2) Every financial institution authorized to receive money on deposit that holds money in trust for an agent as provided for in section 28 shall

- (a) compute periodically the amount of interest earned on money deposited to an agent's interest bearing trust account;
- (b) pay, at least semi-annually, and if semi-annually, in the months of April and October, into an account held in the name of the Foundation, the amounts computed

pursuant to paragraph (a); and

- (c) give written notice to the Board when each payment is made.

Non-compliance
of agent

59. Where the Board is of the opinion that an agent is not complying with a provision of this Part, the Board shall report the non-compliance to the Superintendent.

Agent not
liable to
client

60. No agent is liable, by virtue of the relationship between the agent and a client or the relationship between the agent as a trustee and a cestui que trust, to account to the client or the cestui que trust, as the case may be, for interest received by the agent on money on deposit in an account referred to in section 28.

Client's money
not affected

61.(1) Nothing in this Part affects an arrangement in writing, whenever made, between an agent and another person as to the application of that person's money or interest thereon, or applies to money deposited in a separate account for a person bearing interest that shall be and remain the property of that person.

(2) Nothing in this Part applies to a security deposit held by an agent to which section 18 of The Landlord and Tenant (Residential Tenancies) Act, 1973 applies.

Dissolution
of Foundation

62.(1) Upon the dissolution of the Foundation and after payment of all debts and liabilities of the Foundation, its remaining funds and property shall be distributed or

disposed of to charitable organizations having objects the same as or similar to the objects of the Foundation which carry on their work solely in Canada.

(2) No part of the funds or property of the Foundation shall be available to the members of the Board or to an agent upon dissolution of the Foundation.

Commencement

63. This Part comes into force on a day to be proclaimed by the Lieutenant-Governor in Council."



CHAPTER 15

AN ACT TO AMEND THE EMBALMERS AND FUNERAL
DIRECTORS ACT, 1975

(Assented to June 17, 1986)

Analysis

Section:

Section:

1. S.13 R&S.
Conditions of grant
of licence

2. Commencement

Be it enacted by the Lieutenant-Governor and House of
Assembly in Legislative Session convened, as follows:

1975 No.39
as amended

1. Section 13 of The Embalmers and
Funeral Directors Act, 1975 is repealed
and the following substituted:

Conditions
of grant
of licence

"13.(1) Every person who is
not less than nineteen years of
age, and has complied with the
requirements of this Act and the
regulations for the grant of a
licence to practise as a funeral
director may apply to the Registrar
for and has the right to obtain
from the Registrar a licence to
practise as a funeral director in
the province if the application is
accompanied by the licence fee
prescribed for funeral directors by
the regulations.

(2) Every person who is not
less than nineteen years of age,
and has complied with the require-

ments of this Act and the regulations for the grant of a licence to practise as an embalmer may apply to the Registrar for and has the right to obtain from the Registrar a licence to practise as an embalmer in the province if the application is accompanied by the licence fee prescribed for embalmers by the regulations."

Commencement

2. This Act comes into force on a day to be proclaimed by the Lieutenant-Governor in Council.



CHAPTER 16

AN ACT RESPECTING AN INCREASE OF
CERTAIN PENSIONS

(Assented to June 17, 1986)

Analysis

Section:

1. Short title
2. Increase of pension

Section:

3. Minimum pension
4. Commencement
Schedule

Be it enacted by the Lieutenant-Governor and House of
Assembly in Legislative Session convened, as follows:

Short
title

1. This Act may be cited as The
Increase of Pensions Act, 1986.

Increase of
pension

2.(1) Persons in receipt of a
pension or survivor benefit by virtue of
the Acts listed in the Schedule, or on
an ex gratia basis, on or before March
31, 1986, or whose effective date of
retirement is on or before that date,
shall have the pensions being received
or to be received by them increased by
four per cent.

(2) Notwithstanding subsection
(1), an increase of pension or survivor
benefit awarded under this Act shall not
be less than two hundred and forty
dollars per annum.

Minimum
pension

3. The minimum pension or survivor
benefit being paid by virtue of the Acts
listed in the Schedule or on an ex

gratia basis shall not be less than two thousand two hundred dollars per annum, so long as such pension or survivor benefit is based on ten years of pensionable service.

Commencement 4. This Act is deemed to have come into force on the first day of April, 1986.

SCHEDULE

1. The Adult Corrections Act, 1975
2. The Civil Service Act
3. The Constabulary (Pensions) Act
4. The Deferred Pensions Act
5. The Education Act, 1927
6. The Education (Teachers' Pensions) Act
7. The Members of the House of Assembly Contributory Pension Plan Act
8. The Members of the House of Assembly (Retirement Allowances) Act
9. The Memorial University (Pensions) Act
10. The Pension (Auditor General) Act, 1968
11. The Pensions (Public Officers) Act, 1966
12. The Public Service (Pensions) Act
13. The Royal Newfoundland Constabulary Act
14. The Uniformed Services Pensions Act



CHAPTER 17

AN ACT TO AMEND THE LAND
DEVELOPMENT ACT

(Assented to June 17, 1986)

Analysis

Section:

1. S.25 Amdt.
Amending grant

Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

RSN 1970
c.197
as amended

1. Section 25 of The Land Development Act is amended by striking out the words "Subject to the approval of the Lieutenant-Governor in Council" and substituting the words "On the recommendation of the Minister of Rural, Agricultural and Northern Development".



CHAPTER 18

AN ACT TO AMEND THE LABRADOR LINERBOARD LIMITED AGREEMENT ACT, 1979 IN ORDER TO RATIFY, CONFIRM AND ADOPT AN AMENDING AGREEMENT ENTERED INTO BETWEEN HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE REPRESENTED BY THE HONOURABLE THE MINISTER OF FOREST RESOURCES AND LANDS AND ABITIBI-PRICE INC.

(Assented to June 17, 1986)

Analysis

Section:	Section
1. 1979 c.11 Appendix Amdt. Amending Agreement ratified	2. Effect of law Schedule

Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

1979 c.11
Appendix
Amdt. Amend-
ing Agreement
ratified

1.(1) Schedule "B" of the Appendix to The Labrador Linerboard Limited Agreement Act, 1979 is amended by the Amending Agreement executed and delivered by and between Her Majesty the Queen in right of the province as represented by the Honourable the Minister of Forest Resources and Lands of the first part and Abitibi-Price Inc. of the second part.

(2) The Amending Agreement referred to in subsection (1) as set forth in the Schedule to this Act is ratified, confirmed and adopted from November 1st, 1985.

Effect of
law

2. The Amending Agreement set forth in the Schedule to this Act is valid and binding upon the persons affected thereby and has the full force and effect of law for all purposes as if expressly enacted in this Act.

Schedule

THIS INDENTURE made this 1st day of November, 1985

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF NEWFOUNDLAND, as represented by the Honourable the Minister of Forest Resources and lands (hereinafter called the "Government") of the one part

AND:

ABITIBI-PRICE INC., a company incorporated under the laws of Canada (hereinafter called the "Company") of the other part

WHEREAS by an Agreement (the "Principal Agreement") dated November 16, 1978 made between the Minister of Industrial Development as Vendor and the Company as Purchaser the parties thereto agreed on the terms and conditions of the purchase by the Company from the Vendor of all the issued and outstanding shares of the capital stock of Labrador Linerboard Limited and the conversion of the linerboard mill at Stephenville into a newsprint mill, all as more particularly set forth in the Principal Agreement;

AND WHEREAS by a further agreement (the "Agreement") dated December 18, 1978 made between Her Majesty the Queen as represented by the Honourable the Minister of Forestry and Agriculture and the Company the parties made provision for the supply of wood to the newsprint mill;

AND WHEREAS the name of ABITIBI PAPER COMPANY LTD. was changed to ABITIBI-PRICE INC. by virtue of a Certificate of Continuance under the Canada Business Corporations Act dated October 15, 1979;

AND WHEREAS the Honourable the Minister of Forest Resources and Lands is the successor to the Minister of Forestry and Agriculture;

AND WHEREAS the parties wish to effect an amendment to the Agreement;

NOW THEREFORE THIS INDENTURE WITNESSETH that in consideration of the premises and of the sum of ONE DOLLAR (\$1.00) paid by each party to the other (the receipt and sufficiency whereof is hereby acknowledged) the parties hereto covenant and agree as follows:

1. The Agreement is hereby amended by
 - (a) renumbering clause 6 thereof as clause 6(1), and
 - (b) inserting the words "except such regeneration applies to stands destroyed by fire, insects or causes other than normal logging operations" after the phrase "other than regeneration" where it appears in sub-clause 6(1).
2. The Agreement is further amended by adding after sub-clause 6(1) the following:

"6(2). Sub-clause 6(1) as amended shall take effect from and after April 1, 1985."

IN WITNESS WHEREOF the parties hereto have executed this indenture the day and year first above written.

SIGNED by the Minister of
Forest Resources and Lands
and SEALED with the Seal of
the Department of Forest
Resources and Lands in the
presence of:

(Sgd.) Len Simms

MINISTER OF FOREST
RESOURCES AND LANDS

(Sgd.) R.D. Peters

WITNESS

SEALED with the Common
Seal of Abitibi-Price
Inc. and signed by its
duly authorized officers
in the presence of:

ABITIBI-PRICE INC.

per: (Sgd.) T. M. Devine

Vice-President

per: (Sgd.) J. E. Gebbie

Assistant-Secretary

(Sgd.) D. A. Cuthbertson

WITNESS



CHAPTER 19

AN ACT TO AMEND THE TOBACCO TAX ACT,
1978 AND THE TOBACCO TAX ACT, 1986

(Assented to June 17, 1986)

Analysis

Section:

1. The Tobacco Tax Act, 1978 S.8(1)(b) Amdt.

Section:

2. The Tobacco Tax Act, 1986 S.9(1)(b) Amdt.
3. Commencement

Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

1978 c.38

1. Paragraph (b) of subsection (1) of section 8 of The Tobacco Tax Act, 1978 is amended by striking out the words "one point thirty-two cents" and substituting the words "one point fifty-seven cents".

1986 c.1

2. Paragraph (b) of subsection (1) of section 9 of The Tobacco Tax Act, 1986 is amended by striking out the words "one point thirty-two cents" and substituting the words "one point fifty-seven cents".

Commencement

3. This Act is deemed to have come into force on March 26, 1986.



CHAPTER 20

AN ACT TO AMEND THE RETAIL SALES
TAX ACT, 1978

(Assented to June 17, 1986)

Analysis

Section:

1. S.9.1 Rep.
Building materials

Section:

2. S.50(1)(f.1) Rep.
Regulations
3. Commencement

Be it enacted by the Lieutenant-Governor and House of
Assembly in Legislative Session convened, as follows:

1978 c.36
as amended

1. Section 9.1 of The Retail Sales
Tax Act, 1978 is repealed.

2. Paragraph (f.1) of subsection
(1) of section 50 of the Act is repeal-
ed.

Commencement

3. This Act is deemed to have come
into force on March 26, 1986.



CHAPTER 21

AN ACT TO AMEND THE LOAN AND GUARANTEE ACT, 1957

(Assented to June 17, 1986)

Analysis

Section:

- 1. Schedule Amdt.
- 2. 1982 c.18
Schedule Amdt.
- 3. 1983 c.6
Schedule Amdt.

Section:

- 4. 1983 c.37
Schedule Amdt.
- 5. 1985 c.3
Schedule Amdt.

Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

1957 No.70
as amended

1. The Schedule to The Loan and Guarantee Act, 1957 is amended by adding thereto the following:

"1. Aqua Fisheries Limited	\$ 150,000	June 1/85	May 31/86
2. Atlantic Ocean Farms Limited	270,000	Sept. 10/85	May 31/87
3. Baie Verte Mines Inc.	1,000,000	June 6/85	June 30/85
4. Baie Verte Mines Inc.	1,750,000	July 10/85	Sept. 30/85

1986	<u>The Loan and Guarantee (Amendment) Act, 1957</u>		Chapter 21
5.	Baie Verte Mines Inc.	250,000	Oct. 2/85 April 30/86
6.	Baie Verte Mines Inc.	1,000,000	Nov.21/85 April 30/86
7.	Baie Verte Mines Inc.	1,000,000	Jan. 17/86 April 30/86
8.	Baie Verte Mines Inc.	1,000,000	Feb. 20/86 April 30/86
9.	Baie Verte Mines Inc.	1,000,000	March 20/86 April 30/86
10.	Earle Proteins Limited	400,000	Aug. 13/85 May 31/86
11.	Easteel Industries (1984) Ltd.	100,000	Sept. 6/85 June 30/86
12.	Easteel Industries (1984) Ltd.	400,000	Dec. 11/85 June 30/86
13.	Fishery Products International, Fishery Products Inc. & St. Anthony Fisheries	7,375,000	Aug. 1/85 Dec. 31/85
14.	Fitz Ennis Cement Carriers Limited	200,000	Sept. 25/85 Nov. 30/85
15.	Hawke Industries Limited	46,000	Aug. 1/85 July 31/86

16.	Heritage Woodworks Limited	30,000	Aug. 26/85	June 30/86
17.	Ichthus Sea Products Limited	250,000	Feb. 18/86	Dec. 31/86
18.	P. Janes & Sons Limited	500,000	July 18/85	Dec. 31/85
19.	Marystown Shipyard Limited	16,800,000	Aug. 9/85	
20.	Marystown Shipyard Limited	2,400,000	Nov.14/85	
21.	Marystown Shipyard Limited	8,500,000	Nov. 14/85	
22.	Northeast Coast Sealers Co-operative Society Limited	200,000	May 7/86	Dec. 31/86
23.	Notre Dame Bay Fisher- ies Limited	100,000	Oct. 29/85	Jan. 31/86
24.	Ocean U.S. Harvesters Limited	2,100,000	June 28/85	May 26/90
25.	Ocean Harvesters Limited (In Receivership)	1,000,000	April 18/85	Oct. 31/85
26.	Port Enter- prises Limited	150,000	Aug. 8/85	Mar 31/86

27. Superior Seafoods Limited	200,000	Dec, 6/85	June 30/86
28. Vanguard Paper Box Limited	200,000	June 21/85	Jun 30/86".

1982 c.18
Schedule
Amdt.

2. The Schedule to the said Act is further amended by amending the Schedule, as enacted by chapter 18 of 1982, as follows:

- (a) item 7 of that Schedule, as amended by paragraph (c) of section 2 of chapter 6 of 1983 and by paragraph (b) of section 3 of chapter 3 of 1985, is further amended by striking out the date of expiry "Sept. 30/85" and by substituting the date of expiry "Jan. 31/86"; and
- (b) item 16 of that Schedule is amended by striking out the date of expiry "Dec. 26/88" and by substituting the date of expiry "June 28/85".

1983 c.6
Schedule
Amdt.

3. The Schedule to the said Act is further amended by amending item 8 of the Schedule as enacted by chapter 6 of 1983, as amended by paragraph (b) of section 3 of chapter 37 of 1983 and by paragraph (b) of section 4 of chapter 3 of 1985

- (a) by striking out the statutory amount "\$100,000" and by substituting the statutory amount "\$75,000"; and
- (b) by striking out the date of expiry "May 31/85" and by

substituting the date of
expiry "March 31/86".

1983 c.37
Schedule
Amdt.

4. The Schedule to the said Act is further amended by amending item 3 of the Schedule as enacted by chapter 37 of 1983, as amended by paragraph (b) of section 5 of chapter 3 of 1985, by striking out the date of expiry "May 31/85" and by substituting the date of expiry "April 30/86".

1985 c.3
Schedule
Amdt.

5.(1) The Schedule to the said Act is further amended by amending the Schedule, as enacted by chapter 3 of 1985, as follows:

- (a) items 2, 3 and 4 of that Schedule are amended by striking out the dates of expiry "June 30/85" and by substituting the dates of expiry "April 30/86";
- (b) item 7 of that Schedule is amended by striking out the date of expiry "May 31/85" and by substituting the date of expiry "May 31/86";
- (c) item 9 of that Schedule is amended by striking out the date of expiry "Aug. 31/85" and by substituting the date of expiry "June 30/86";
- (d) item 10 of that Schedule is amended by striking out the date of expiry "May 31/85" and by substituting the date of expiry "March 31/86";
- (e) item 13 of that Schedule is amended by adding after the name of the borrower "Fisheries Products International Ltd. the borrowers ", Fish-

ery Products Inc. and St. Anthony Fisheries";

- (f) item 15 of that Schedule is amended by striking out the date of expiry "May 31/85" and by substituting the date of expiry "March 31/86";
- (g) item 16 of that Schedule is amended
 - (i) by striking out the statutory amount "350,000" and by substituting the statutory amount "275,000", and
 - (ii) by striking out the date of expiry "May 31/85" and by substituting the date of expiry "May 31/86";
- (h) item 19 of that Schedule is amended by striking out the date of expiry "March 31/85" and by substituting the date of expiry "May 31/86";
- (i) item 24 of that Schedule is amended by striking out the date of expiry "Aug. 1/85" and by substituting the date of expiry "Jan. 31/86";
- (j) item 25 of that Schedule is amended by striking out the date of expiry "Sept. 30/85" and by substituting the date of expiry "Oct. 31/85";
- (k) item 27 of that Schedule is amended
 - (i) by striking out the name of the borrower "Ocean

Harvesters Limited" and by substituting the name of the borrower "Ocean Harvesters Limited (In Receivership)", and

- (ii) by striking out the date of expiry "Sept. 30/85" and by substituting the date of expiry "Oct. 31/85";
 - (l) item 28 of that Schedule is amended by striking out the date of expiry "Dec. 31/85" and by substituting the date of expiry "Dec. 31/86";
 - (m) item 34 of that Schedule is amended by striking out the date of expiry "Nov. 30/85" and by substituting the date of expiry "Nov. 30/86";
 - (n) item 37 of that Schedule is amended by striking out the date of expiry "May 31/85" and by substituting the date of expiry "May 31/86"; and
 - (o) item 39 of that Schedule is amended by striking out the date of expiry "May 31/85" and by substituting the date of expiry "April 30/86".
- (2) Paragraph (e) of subsection (1) is deemed to have come into force on June 28, 1985.
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CHAPTER 22

AN ACT TO AMEND THE LOCAL AUTHORITY
GUARANTEE ACT, 1957

(Assented to June 17, 1986)

Analysis

Section:

1. Schedule Amdt.

Be it enacted by the Lieutenant-Governor and House of
Assembly in Legislative Session convened, as follows:

1957 No. 71
as amended

1. The Schedule to The
Local Authority Guarantee Act,
1957 is amended by adding thereto
the following:

"The Community Council of the Community of Admiral's Beach.....	\$ 70,000	20 years
The Town Council of the Town of Appleton...	390,000	20 years
The Town Council of the Town of Appleton...	92,400	10 years
The Town Council of the Town of Appleton...	61,600	10 years
The Town Council of the Town of Appleton...	20,000	20 years
The Town Council of the Town of Badger.....	30,000	20 years

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(Amendment) Act, 1957

The Town Council of the Town of Badger's Quay-Valleyfield-Pool's Island.....	390,000	20 years
The Town Council of the Town of Badger's Quay-Valleyfield-Pool's Island.....	250,000	20 years
The Town Council of the Town of Baie Verte..	202,500	20 years
The Town Council of the Town of Bay de Verde.....	300,000	20 years
The Town Council of the Town of Bay de Verde.....	10,000	20 years
The Town Council of the Town of Bay Roberts	200,000	20 years
The Town Council of the Town of Bay Roberts	100,000	20 years
The Town Council of the Town of Bay Roberts	100,000	20 years
The Town Council of the Town of Bay Roberts	350,000	20 years
The Town Council of the Town of Bayview.....	35,000	20 years
The Town Council of the Town of Belleoram....	160,000	20 years
The Town Council of the Town of Belleoram...	22,000	20 years
The Town Council of the Town of Belleoram...	120,000	20 years
The Town Council of the Town of Birchy Bay..	300,000	20 years

1986 The Local Authority Guarantee Chapter 22
(Amendment) Act, 1957

The Town Council of the Town of Birchy Bay..	400,000	20 years
The Town Council of the Town of Bishop's Falls.....	183,000	10 years
The Town Council of the Town of Bishop's Falls.....	122,000	10 years
The Town Council of the Town of Bonavista...	260,000	20 years
The Town Council of the Town of Bonavista...	100,000	20 years
The Town Council of the Town of Bonavista...	350,000	20 years
The Town Council of the Town of Botwood....	345,000	20 years
The Town Council of the Town of Botwood....	174,000	10 years
The Town Council of the Town of Botwood....	116,000	10 years
The Town Council of the Town of Botwood....	100,000	20 years
The Town Council of the Town of Botwood....	63,000	10 years
The Town Council of the Town of Botwood....	42,000	10 years
The Town Council of the Town of Botwood....	15,000	20 years
The Town Council of the Town of Brigus.....	300,000	20 years
The Town Council of the Town of Brigus.....	100,000	20 years

1986	<u>The Local Authority Guarantee (Amendment) Act, 1957</u>	Chapter 22
The Town Council of the Town of Buchans.....	50,000	20 years
The Town Council of the Town of Burin.....	250,000	20 years
The Town Council of the Town of Burin.....	230,000	20 years
The Community Council of the Community of Burlington.....	52,000	20 years
The Town Council of the Town of Burnt Islands.....	95,000	20 years
The Town Council of the Town of Campbellton..	200,000	20 years
The Town Council of the Town of Campbellton..	70,000	20 years
The Town Council of the Town of Campbellton..	5,100	20 years
The Town Council of the Town of Carbonear...	283,200	10 years
The Town Council of the Town of Carbonear...	188,800	10 years
The Town Council of the Town of Carbonear...	70,000	20 years
The Town Council of the Town of Carbonear...	155,000	20 years
The Town Council of the Town of Carbonear...	155,400	10 years
The Town Council of the Town of Carbonear...	103,600	10 years
The Town Council of the Town of Carbonear...	20,300	20 years

1986	<u>The Local Authority Guarantee (Amendment) Act, 1957</u>	Chapter 22
The Town Council of the Town of Carmanville..	50,000	20 years
The Town Council of the Town of Carmanville..	75,000	20 years
The Town Council of the Town of Carmanville..	400,000	20 years
The Town Council of the Town of Carmanville..	18,000	20 years
The Town Council of the Town of Catalina....	75,000	20 years
The Town Council of the Town of Catalina....	25,000	20 years
The Town Council of the Town of Centreville..	75,000	20 years
The Town Council of the Town of Centreville..	120,000	20 years
The Town Council of the Town of Centreville..	40,500	20 years
The Town Council of the Town of Channel- Port aux Basques.....	80,000	20 years
The Town Council of the Town of Channel- Port aux Basques.....	78,000	10 years
The Town Council of the Town of Channel- Port aux Basques.....	52,000	10 years
The Town Council of the Town of Channel- Port aux Basques.....	156,000	10 years
The Town Council of the Town of Channel- Port aux Basques.....	104,000	10 years

1986	<u>The Local Authority Guarantee (Amendment) Act, 1957</u>	Chapter 22
The Town Council of the Town of Channel- Port aux Basques.....	420,000	10 years
The Town Council of the Town of Channel- Port aux Basques.....	280,000	10 years
The Town Council of the Town of Clarenville..	80,000	20 years
The Town Council of the Town of Clarenville..	60,000	10 years
The Town Council of the Town of Clarenville..	40,000	10 years
The Community Council of the Community of Comfort Cove-Newstead...	580,000	20 years
The Community Council of the Community of Comfort Cove-Newstead...	400,000	20 years
The Town Council of the Town of Conception Bay South.....	3,320,000	20 years
The Town Council of the Town of Conception Bay South.....	282,600	10 years
The Town Council of the Town of Conception Bay South.....	188,400	10 years
The Town Council of the Town of Conception Bay South.....	900,000	20 years
The Town Council of the Town of Conception Bay South.....	127,200	10 years

1986 The Local Authority Guarantee Chapter 22
 (Amendment) Act, 1957

The Town Council of the Town of Conception Bay South.....	84,800	10 years
The Corner Brook City Council of the City of Corner Brook.....	200,000	20 years
The Corner Brook City Council of the City of Corner Brook.....	100,000	10 years
The Corner Brook City Council of the City of Corner Brook.....	500,000	20 years
The Corner Brook City Council of the City of Corner Brook.....	600,000	10 years
The Corner Brook City Council of the City of Corner Brook.....	400,000	10 years
The Corner Brook City Council of the City of Corner Brook.....	230,000	20 years
The Corner Brook City Council of the City of Corner Brook.....	1,008,000	10 years
The Corner Brook City Council of the City of Corner Brook.....	372,000	10 years
The Town Council of the Town of Cottlesville..	300,000	20 years
The Town Council of the Town of Cottlesville..	250,000	20 years
The Town Council of the Town of Cow Head...	400,000	20 years
The Town Council of the Town of Deer Lake..	186,600	10 years

1986	<u>The Local Authority Guarantee (Amendment) Act, 1957</u>	Chapter 22
The Town Council of the Town of Deer Lake..	124,400	10 years
The Town Council of the Town of Deer Lake..	136,200	10 years
The Town Council of the Town of Deer Lake..	90,800	10 years
The Town Council of the Town of Dunville.....	181,800	10 years
The Town Council of the Town of Dunville.....	121,200	10 years
The Town Council of the Town of Dunville.....	4,110	10 years
The Town Council of the Town of Dunville.....	2,740	10 years
The Town Council of the Town of Dunville.....	60,000	10 years
The Town Council of the Town of Dunville.....	40,000	10 years
The Town Council of the Town of Durrell.....	60,000	20 years
The Town Council of the Town of Durrell.....	25,000	20 years
The Town Council of the Town of Durrell.....	315,000	20 years
The Town Council of the Town of Durrell.....	350,000	20 years
The Town Council of the Town of Eastport.....	21,000	20 years
The Town Council of the Town of Elliston.....	6,000	20 years
The Town Council of the Town of Embree.....	375,000	20 years

1986	<u>The Local Authority Guarantee (Amendment) Act, 1957</u>	Chapter 22
The Town Council of the Town of Englee.....	12,000	10 years
The Town Council of the Town of Englee.....	8,000	10 years
The Town Council of the Town of Englee.....	8,917	10 years
The Community Council of the Community of Fermeuse.....	200,000	20 years
The Town Council of the Town of Flatrock.....	62,400	10 years
The Town Council of the Town of Fleur de Lys.....	50,000	20 years
The Town Council of the Town of Fortune.....	160,000	20 years
The Town Council of the Town of Freshwater, P.B.....	30,000	20 years
The Town Council of the Town of Freshwater, P.B.....	15,000	20 years
The Town Council of the Town of Gambo.....	300,000	20 years
The Town Council of the Town of Gander.....	537,000	10 years
The Town Council of the Town of Gander.....	358,000	10 years
The Town Council of the Town of Gander.....	360,000	10 years
The Town Council of the Town of Gander.....	240,000	10 years

1986 The Local Authority Guarantee Chapter 22
 (Amendment) Act, 1957

The Town Council of the Town of Garnish....	300,000	20 years
The Community Council of the Community of Gaskiers-Point La Haye..	150,000	20 years
The Town Council of the Town of Gaultois.....	90,000	10 years
The Town Council of the Town of Gaultois.....	10,000	10 years
The Community Council of the Community of Gillams.....	15,000	20 years
The Town Council of the Town of Glenwood...	15,000	20 years
The Town Council of the Town of Glenwood...	21,600	10 years
The Town Council of the Town of Glenwood...	14,400	10 years
The Town Council of the Town of Glovertown..	123,000	10 years
The Town Council of the Town of Glovertown..	82,000	10 years
The Town Council of the Town of Glovertown..	30,000	20 years
The Town Council of the Town of Glovertown..	150,000	20 years
The Town Council of the Town of Goulds.....	1,800,000	20 years
The Town Council of the Town of Goulds.....	96,000	10 years
The Town Council of the Town of Goulds.....	64,000	10 years

1986	<u>The Local Authority Guarantee (Amendment) Act, 1957</u>	Chapter 22
The Town Council of the Town of Goulds.....	18,000	10 years
The Town Council of the Town of Goulds.....	12,000	10 years
The Town Council of the Town of Grand Bank.....	71,400	10 years
The Town Council of the Town of Grand Bank.....	250,000	20 years
The Town Council of the Town of Grand Falls.....	207,000	10 years
The Town Council of the Town of Grand Falls.....	138,000	10 years
The Town Council of the Town of Grand Falls.....	175,800	10 years
The Town Council of the Town of Greenspond..	24,000	20 years
The Town Council of the Town of Greenspond..	6,300	20 years
The Community Council of the Community of Happy Adventure.....	400,000	20 years
The Community Council of the Community of Happy Adventure.....	620,000	20 years
The Community Council of the Community of Happy Adventure.....	35,000	20 years
The Town Council of the Town of Happy Valley - Goose Bay.....	124,200	10 years

1986	<u>The Local Authority Guarantee (Amendment) Act, 1957</u>	Chapter 22
The Town Council of the Town of Happy Valley - Goose Bay.....	400,000	10 years
The Town Council of the Town of Harbour Breton.....	107,100	10 years
The Town Council of the Town of Harbour Breton.....	11,900	10 years
The Town Council of the Town of Harbour Breton.....	64,183.90	10 years
The Town Council of the Town of Harbour Breton.....	7,131.54	10 years
The Town Council of the Town of Harbour Grace.....	150,000	10 years
The Town Council of the Town of Harbour Grace.....	80,000	20 years
The Town Council of the Town of Harbour Grace.....	45,000	10 years
The Town Council of the Town of Harbour Grace.....	30,000	10 years
The Community Council of the Community of Harbour Grace South.....	33,600	10 years
The Community Council of the Community of Harbour Grace South.....	22,400	10 years
The Town Council of the Town of Hawke's Bay..	300,000	20 years

1986 The Local Authority Guarantee Chapter 22
 (Amendment) Act, 1957

The Town Council of the Town of Heart's Content.....	200,000	20 years
The Town Council of the Town of Heart's Delight-Islington.....	56,400	10 years
The Town Council of the Town of Heart's Delight-Islington.....	37,600	10 years
The Town Council of the Town of Heart's Delight-Islington.....	250,000	20 years
The Town Council of the Town of Heart's Delight-Islington.....	25,000	20 years
The Town Council of the Town of Heart's Delight-Islington.....	200,000	20 years
The Town Council of the Town of Heart's Desire.....	23,400	10 years
The Town Council of the Town of Heart's Desire.....	15,600	10 years
The Community Council of the Community of Hermitage-Sandyville.....	200,000	20 years
The Community Council of the community of Hermitage-Sandyville.....	150,000	20 years
The Town Council of the Town of Holyrood....	98,400	10 years
The Community Council of the Community of Irishtown.....	300,000	20 years

1986	<u>The Local Authority Guarantee (Amendment) Act, 1957</u>	Chapter 22
The Community Council of the Community of Irishtown.....	300,000	20 years
The Community Council of the Community of King's Point	300,000	20 years
The Town Council of the Town of Labrador City.....	183,000	10 years
The Town Council of the Town of Labrador City.....	122,000	10 years
The Town Council of the Town of Labrador City.....	121,200	10 years
The Town Council of the Town of LaScie.....	200,000	20 years
The Town Council of the Town of LaScie.....	90,000	20 years
The Town Council of the Town of LaScie.....	45,000	10 years
The Town Council of the Town of LaScie.....	30,000	10 years
The Town Council of the Town of Lawn.....	250,000	20 years
The Town Council of the Town of Lawn.....	150,000	20 years
The Town Council of the Town of Lawn.....	29,500	20 years
The Town Council of the Town of Lawn.....	40,000	20 years
The Town Council of the Town of Lawn.....	19,000	20 years

1986 The Local Authority Guarantee Chapter 22
(Amendment) Act, 1957

The Community Council of the Community of Leading Tickles West.....	100,000	20 years
The Community Council of the Community of Lewins Cove.....	10,000	20 years
The Community Council of the Community of Lewins Cove.....	200,000	20 years
The Town Council of the Town of Lewisporte..	205,800	10 years
The Town Council of the Town of Lewisporte..	137,200	10 years
The Town Council of the Town of Lewisporte..	131,400	10 years
The Town Council of the Town of Lewisporte..	87,600	10 years
The Community Council of the Community of Little Bay Islands.....	160,000	20 years
The Community Council of the Community of Little Bay Islands.....	400,000	20 years
The Town Council of the Town of Little Catalina.....	200,000	20 years
The Community Council of the Community of Lushes Bight-Beaumont-Beaumont North.....	250,000	20 years
The Community Council of the Community of Lushes Bight-Beaumont-Beaumont North.....	200,000	20 years
The Town Council of the Town of Main Brook...	300,000	20 years

1986	<u>The Local Authority Guarantee (Amendment) Act, 1957</u>	Chapter 22
The Town Council of the Town of Main Brook...	15,000	20 years
The Town Council of the Town of Main Brook...	300,000	20 years
The Town Council of the Town of Main Brook...	20,000	20 years
The Town Council of the Town of Main Brook...	45,000	20 years
The Town Council of the Town of Marystown..	225,000	10 years
The Town Council of the Town of Marystown..	150,000	10 years
The Town Council of the Town of Marystown..	520,000	20 years
The Town Council of the Town of Marystown..	255,000	20 years
The Community Council of the Community of Meadows.....	25,000	20 years
The Community Council of the Community of Meadows.....	50,000	20 years
The Community Council of the Community of Middle Arm.....	250,000	20 years
The Community Council of the Community of Middle Arm.....	250,000	20 years
The Community Council of the Community of Miles Cove.....	23,000	20 years
The Town Council of the Town of Milltown-Head Bay D'Espoir.....	100,000	20 years

1986	<u>The Local Authority Guarantee (Amendment) Act, 1957</u>	Chapter 22
The Community Council of the Community of Ming's Bight.....	100,000	20 years
The Town Council of the Town of Mount Pearl.....	534,000	10 years
The Town Council of the Town of Mount Pearl.....	356,000	10 years
The Town Council of the Town of Mount Pearl.....	330,000	20 years
The Town Council of the Town of Mount Pearl.....	194,400	10 years
The Town Council of the Town of Mount Pearl.....	129,600	10 years
The Town Council of the Town of Mount Pearl.....	91,200	10 years
The Town Council of the Town of Mount Pearl.....	60,800	10 years
The Town Council of the Town of New Perlican.....	17,500	20 years
The Town Council of the Town of New Perlican.....	17,000	20 years
The Town Council of the Town of New Perlican.....	6,000	20 years
The Town Council of the Town of Newtown, B. Bay.....	20,000	20 years

1986	<u>The Local Authority Guarantee (Amendment) Act, 1957</u>	Chapter 22
The Town Council of the Town of Newtown, B. Bay.....	23,000	10 years
The Town Council of the Town of Norman's Cove-Long Cove.....	50,000	20 years
The Town Council of the Town of Norris Arm....	39,600	10 years
The Town Council of the Town of Norris Arm....	26,400	10 years
The Town Council of the Town of Northwest River.....	400,000	20 years
The Town Council of the Town of North West River.....	100,000	20 years
The Community Council of the Community of Pacquet.....	250,000	20 years
The Community Council of the Community of Pacquet	200,000	20 years
The Town Council of the Town of Paradise....	97,800	10 years
The Town Council of the Town of Paradise....	65,200	10 years
The Town Council of the Town of Paradise....	600,000	20 years
The Community Council of the Community of Parsons's Pond.....	90,000	20 years
The Community Council of the Community of Parson's Pond.....	60,000	20 years

1986	<u>The Local Authority Guarantee (Amendment) Act, 1957</u>	Chapter 22
The Town Council of the Town of Pasadena....	145,000	20 years
The Town Council of the Town of Pasadena....	50,000	20 years
The Town Council of the Town of Petty Harbour-Maddox Cove....	215,000	20 years
The Town Council of the Town of Petty Harbour-Maddox Cove....	350,000	20 years
The Town Council of the Town of Placentia....	90,000	20 years
The Town Council of the Town of Placentia....	235,000	20 years
The Town Council of the Town of Placentia....	45,600	10 years
The Town Council of the Town of Placentia....	30,400	10 years
The Town Council of the Town of Placentia....	10,101.93	10 years
The Town Council of the Town of Placentia....	6,734.62	10 years
The Town Council of the Town of Placentia....	200,000	20 years
The Town Council of the Town of Placentia....	60,000	20 years
The Community Council of the Community of Plate Cove East.....	200,000	20 years
The Community Council of the Community of Plate Cove East.....	200,000	20 years

1986	<u>The Local Authority Guarantee (Amendment) Act, 1957</u>	Chapter 22
The Town Council of the Town of Point Leamington.....	60,000	10 years
The Town Council of the Town of Point Leamington.....	40,000	10 years
The Town Council of the Town of Point Leamington.....	125,000	20 years
The Town Council of the Town of Point Leamington.....	260,000	20 years
The Community Council of the Community of Point of Bay.....	100,000	20 years
The Community Council of the community of Point of Bay.....	150,000	20 years
The Community Council of the Community of Pool's Cove.....	25,000	20 years
The Community Council of the Community of Pool's Cove.....	10,000	20 years
The Town Council of the Town of Port aux Choix...	100,000	20 years
The Town Council of the Town of Port aux Choix...	50,000	20 years
The Town Council of the Town of Port Blandford...	150,000	20 years
The Community Council of the Community of Port Hope Simpson.....	45,000	10 years
The Community Council of the Community of Port Hope Simpson.....	30,000	10 years

1986 The Local Authority Guarantee Chapter 22
(Amendment) Act, 1957

The Community Council of the Community of Port Kirwin.....	100,000	20 years
The Town Council of the Town of Portugal Cove.....	41,000	20 years
The Town Council of the Town of Portugal Cove.....	10,000	20 years
The Town Council of the Town of Portugal Cove.....	800,000	20 years
The Town Council of the Town of Portugal Cove.....	85,000	20 years
The Town Council of the Town of Portugal Cove.....	170,000	20 years
The Town Council of the Town of Portugal Cove.....	150,000	20 years
The Community Council of the Community of Portugal Cove South.....	40,000	20 years
The Town Council of the Town of Pouch Cove	480,000	20 years
The Town Council of the Town of Pouch Cove....	200,000	20 years
The Town Council of the Town of Ramea.....	52,862.08	10 years
The Town Council of the Town of Ramea.....	5,873.57	10 years
The Town Council of the Town of Ramea.....	23,677.46	10 years

1986	<u>The Local Authority Guarantee (Amendment) Act, 1957</u>	Chapter 22
The Community Council of the Community of Red Harbour.....	61,000	20 years
The Community Council of the Community of Red Harbour.....	190,000	20 years
The Community Council of the Community of Reidville	300,000	20 years
The Town Council of the Town of Roddickton...	50,000	20 years
The Town Council of the Town of St. Alban's..	100,000	20 years
The Town Council of the Town of St. Alban's..	50,000	20 years
The Town Council of the Town of St. Alban's..	57,000	10 years
The Town Council of the Town of St. Alban's..	38,000	10 years
The Town Council of the Town of St. Alban's..	30,000	20 years
The Town Council of the Town of St. Anthony.....	136,200	10 years
The Town Council of the Town of St. Anthony.....	90,800	10 years
The Town Council of the Town of St. Anthony..	144,600	10 years
The Town Council of the Town of St. Anthony..	96,400	10 years
The Community Council of the Community of St. Bernard's.....	100,000	20 years

1986 The Local Authority Guarantee Chapter 22
(Amendment) Act, 1957

The Community Council of the Community of St. Bernard's.....	150,000	20 years
The Town Council of the Town of St. George's.....	150,000	10 years
The Town Council of the Town of St. George's.....	250,000	20 years
The Town Council of the Town of St. George's.....	200,000	20 years
The Town Council of the Town of St. George's.....	65,000	20 years
The Town Council of the Town of St. George's....	88,200	10 years
The Town Council of the Town of St. Jacques - Coomb's Cove.....	90,000	10 years
The Town Council of the Town of St. Jacques - Coomb's Cove.....	10,000	10 years
The St. John's Municipal Council of the City of St. John's.....	600,000	10 years
The St. John's Municipal Council of the City of St. John's.....	400,000	10 years
The St. John's Municipal Council of the City of St. John's.....	355,575	10 years
The St. John's Municipal Council of the City of St. John's.....	118,525	10 years
The St. John's Municipal Council of the City of St. John's.....	555,540	10 years

1986	<u>The Local Authority Guarantee (Amendment) Act, 1957</u>	Chapter 22
The St. John's Municipal Council of the City of St. John's.....	370,360	10 years
The St. John's Municipal Council of the City of St. John's.....	600,000	10 years
The St. John's Municipal Council of the City of St. John's.....	400,000	10 years
The St. John's Metro- politan Area Board of the St. John's Metropolitan Area.....	94,200	10 years
The St. John's Metro- politan Area Board of the St. John's Metropolitan Area.....	90,000	10 years
The Town Council of the Town of St. Lawrence....	36,000	20 years
The Community Council of the Community of St. Lunaire-Griquet.....	30,000	20 years
The Community Council of the Community of St. Lunaire-Griquet.....	54,000	20 years
The Community Council of the Community of St. Lunaire-Griquet.....	3,500	20 years
The Community Council of the Community of St. Mary's.....	10,000	20 years
The Community Council of the Community of St. Paul's.....	20,000	20 years
The Community Council of the Community of St. Paul's.....	10,000	20 years

1986	<u>The Local Authority Guarantee (Amendment) Act, 1957</u>	Chapter 22
The Town Council of the Town of St. Thomas.....	82,200	10 years
The Town Council of the Town of Salmon Cove.....	22,000	20 years
The Community Council of the Community of Sandy Cove, Bonavista Bay.....	50,000	20 years
The Town Council of the Town of Shoal Harbour.....	550,000	20 years
The Town Council of the Town of South Brook, Hall's Bay.....	47,400	10 years
The Town Council of the Town of South Brook, Hall's Bay.....	31,600	10 years
The Town Council of the Town of Spaniard's Bay..	150,000	20 years
The Town Council of the Town of Spaniard's Bay..	60,000	20 years
The Town Council of the Town of Spaniard's Bay..	25,000	20 years
The Town Council of the Town of Spaniard's Bay	25,000	20 years
The Town Council of the Town of Stephenville.....	360,000	10 years
The Town Council of the Town of Stephenville.....	240,000	10 years
The Town Council of the Town of Stephen- ville Crossing.....	77,400	10 years
The Town Council of the Town of Stephenville Crossing.....	51,600	10 years

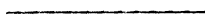
1986 The Local Authority Guarantee Chapter 22
 (Amendment) Act, 1957

The Town Council of the Town of Stephenville Crossing.....	225,000	20 years
The Town Council of the Town of Summerford..	400,000	20 years
The Town Council of the Town of Summerford..	615,000	20 years
The Town Council of the Town of Torbay.....	400,000	20 years
The Town Council of the Town of Torbay.....	200,000	20 years
The Town Council of the Town of Trepassey..	300,000	20 years
The Town Council of the Town of Trinity, B.B.....	300,000	20 years
The Town Council of the Town of Trinity, B.B.....	150,000	20 years
The Town Council of the Town of Triton.....	400,000	20 years
The Town Council of the Town of Triton.....	36,000	10 years
The Town Council of the Town of Triton.....	24,000	10 years
The Community Council of the Community of Trout River.....	48,000	20 years
The Town Council of the Town of Twillin- gate.....	25,000	20 years
The Town Council of the Town of Twillin- gate.....	170,000	20 years

1986 The Local Authority Guarantee Chapter 22
(Amendment) Act, 1957

The Town Council of the Town of Twillingate.....	100,000	20 years
The Town Council of the Town of Twillingate.....	14,000	20 years
The Town Council of the Town of Upper Island Cove.....	500,000	20 years
The Town Council of the Town of Upper Island Cove.....	400,000	20 years
The Town Council of the Town of Victoria.....	250,000	20 years
The Town Council of the Town of Victoria.....	220,000	20 years
The Town Council of the Town of Wabana.....	30,000	20 years
The Town Council of the Town of Wabana.....	50,000	20 years
The Town Council of the Town of Wabana.....	330,000	20 years
The Town Council of the Town of Wabush.....	64,800	10 years
The Town Council of the Town of Wabush.....	66,000	10 years
The Town Council of the Town of Wedgewood Park..	125,000	20 years
The Town Council of the Town of Wedgewood Park..	35,400	10 years
The Town Council of the Town of Wedgewood Park..	23,600	10 years
The Town Council of the Town of Wesleyville..	300,000	20 years

1986	<u>The Local Authority Guarantee (Amendment) Act, 1957</u>	Chapter 22
The Town Council of the Town of Wesleyville..	15,000	20 years
The Town Council of the Town of Wesleyville.....	250,000	20 years
The Town Council of the Town of Whitbourne...	100,000	20 years
The Town Council of the Town of Whitbourne.....	120,000	20 years
The Community Council of the Community of Whiteway.....	65,000	20 years
The Town Council of the Town of Windsor.....	237,000	10 years
The Town Council of the Town of Windsor.....	158,000	10 years
The Town Council of the Town of Windsor.....	180,000	10 years
The Town Council of the Town of Windsor.....	120,000	10 years
The Community Council of the Community of Woody Point.....	135,000	20 years".





CHAPTER 23

AN ACT TO AMEND THE NEWFOUNDLAND AND
LABRADOR HOUSING CORPORATION ACT

(Assented to June 17, 1986)

Analysis

Section:

1. S.25.1 R&S.
Leases

Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

RSN 1970
c.249 as
amended

1. Section 25.1 of The Newfoundland and Labrador Housing Corporation Act is repealed and the following substituted:

Leases

"25.1 Where the Corporation has by a lease granted title to property for the term of nine hundred and ninety-nine years, the leasehold interest in the property shall be deemed to be converted into a freehold interest in the property

- (a) in the case where the lease provides for the payment of rental of one dollar per annum, on the commencement of this section; and
- (b) in the case where the lease provides for the payment of an amount greater than one dollar per annum, on the full

payment to the Corporation of the amount owing under the lease, except where the lessee has been informed by the lessor that the lessee has failed to satisfy or fulfill such other obligations as may be provided for in the lease."



CHAPTER 24

AN ACT TO AMEND THE SOCIAL ASSISTANCE
ACT, 1977

(Assented to June 17, 1986)

Analysis

Section:

1. S.22.1 Added
Limitation period

Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

- 1977 c.102 as amended
1. The Social Assistance Act, 1977 is amended by adding immediately after section 22 the following:

Limitation period

"22.1 Every prosecution under this Act or the regulations shall be commenced within three years from the date on which the offence is alleged to have been committed."



CHAPTER 25

AN ACT TO AMEND THE MARINE INSTITUTE ACT

(Assented to June 17, 1986)

Analysis

Section:	Section:
1. S.9(1)(a) Amdt. Powers of Board	Vice-presidents
2. S.22 R&S.	3. Ss.23 & 24 Amdt. Salaries and pensions

Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened as follows:

1984 c.32 1. Paragraph (a) of subsection (1) of section 9 of The Marine Institute Act is amended by striking out the words "the vice-president" and by substituting the word "vice-presidents".

2. Section 22 of the said Act is repealed and the following substituted:

Vice-Presidents "22. The Lieutenant-Governor in Council may appoint one or more vice-presidents of the Institute who shall perform such duties as may be assigned to them by the president and during the absence of the president, one of the vice-presidents shall carry out the duties of the president."

3. Sections 23 and 24 of the said Act are amended by striking out the word "vice-president" and by substituting the word "vice-presidents".



CHAPTER 26

AN ACT TO PROVIDE FOR PAYMENT OF
FINANCIAL ASSISTANCE FOR STUDENTS
ATTENDING POST-SECONDARY EDUCATIONAL
INSTITUTIONS

(Assented to June 17, 1986)

Analysis

Section:	Section:
1. Short title	9. No right to payments
2. Definitions	10. Consolidated Revenue Fund
3. Regulations	11. Offences
4. Agreements with federal government	12. Actions in Attorney General's name
5. Further agreements	13. Penalty
6. Amending agreements	14. RSN c.386 Repealed
7. Payments not assignable	15. Commencement
8. Re overpayment	

Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

Short title 1. This Act may be cited as The Student Allowances Act.

Definitions 2. In this Act

(a) "allowance" means the allowance prescribed under section 3;

(b) "educational institution" means an institution of learning, whether within or outside the province, that offers courses at a post-secondary level and is prescribed under

section 3 as a specified educational institution for the purpose of the Canada Student Loans Act and this Act;

- (c) "Minister" means the Minister of Career Development and Advanced Studies;
- (d) "prescribed" means prescribed by regulations; and
- (e) "student" means a student at an educational institution who comes within the definition in the Canada Student Loans Regulations under the Canada Student Loans Act of a full-time student and whose course of studies
 - (i) is approved by the Minister;
 - (ii) lasts for not less than the prescribed period; and
 - (iii) leads to a degree, diploma, certificate or other academic qualifications approved by the Minister.

Regulations

3.(1) The Lieutenant-Governor in Council may make regulations

- (a) authorizing the payment by the Minister to educational institutions in respect of students attending the educational institution of such fees and other charges, or portions thereof;
- (b) defining what shall be considered as fees and charges;

- (c) authorizing the payment by the Minister to such students of such allowances and in respect of such period or periods as the Minister may prescribe;
- (d) authorizing the payment by the Minister to such students of such fellowships and in respect of such period or periods as the Minister may prescribe;
- (e) authorizing the payment by the Minister to financial institutions in respect of loans by students from the financial institutions;
- (f) prescribing the manner of making application for any of the payments referred to in this section, the evidence to be furnished, including evidence under oath or affirmation, in connection with the application and the manner of approval of the application;
- (g) prescribing any qualifications, terms and conditions to be met or fulfilled by a student before any payments may be paid in respect of such student, and different qualifications, terms and conditions may be prescribed in respect of the different payments;
- (h) the circumstances under which any of the payments may be withheld, suspended, cancelled or forfeited and the disposition of that payment;
- (i) respecting the making of investigations as to the

eligibility of any person to or in respect of a payment and as to the use made thereof, and providing for the suspension of payment or payments during an investigation and for the reinstatement or resumption of payment after suspension;

- (j) providing for the designation of persons as investigators and prescribing their powers and duties;
- (k) prescribing the purpose for which any payment authorized by this section is to be used;
- (l) prescribing the manner of and time when payments authorized by this section are to be made;
- (m) prescribing forms for use under this Act and the regulations;
- (n) forbidding the reduction or restriction of financial assistance under this Act;
- (o) establishing such boards, committees and councils as the Lieutenant-Governor in Council deems desirable to assist and advise the Minister in carrying out the provisions of this Act and the regulations, prescribing the powers and duties thereof and appointing the members thereof;
- (p) prescribing educational institutions, either particularly or as a member of a class, as

specified educational institutions; and

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

(2) The Lieutenant-Governor in Council may, in regulations made under subsection (1), provide that any person who fails to comply with or otherwise contravenes any specified provision of the regulations is guilty of an offence and the Lieutenant-Governor in Council 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.

(3) Regulations may be made under this section with retroactive effect to September 1, 1982 so long as they are made not later than twelve months after this Act is assented to.

Agreements
with federal
government

4.(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) 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 for the encouragement of or assistance to students in or from the province, or both such encouragement and assistance, or relating to any aspect of the matters entrusted to the Minister by or under this Act; or

- (b) the payment to or by the province of contributions in respect of the cost of any projects referred to in paragraph (a).

(2) For the purpose of assisting the development of educational opportunities with respect to students in or from the province and improving the standard of post-secondary education 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 by the Government of the province or with the Government of 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.

Further
agreements

5. Subject to the approval of the Lieutenant-Governor in Council, the Minister may

- (a) enter into any agreement for promoting the objects of this Act, including, without limitation of the foregoing, agreements with educational institutions or any other person; or
- (b) enter into any agreement for which no specific provision is made elsewhere in this Act which the Minister deems necessary or desirable for the purpose of exercising or discharging his or her powers, duties or functions.

Amending
agreements

6. Power to enter into an agreement under this Act shall include power to implement the agreement and to amend it from time to time, but approval of

the Lieutenant-Governor in Council for any amending agreement is required in like manner as for the original agreement.

Payments not
assignable

7. No amount of money payable under this Act or the regulations shall be assigned, charged, alienated, attached, or anticipated or given as security, and any transaction purporting to assign, charge, alienate, attach, anticipate or give as security any such amount is void.

Re overpay-
ment

8.(1) A person who receives or obtains any amount of money under this Act or the regulations to which that person is not entitled or an amount of money in excess of the sum to which that person is entitled, shall forthwith return the cheque or the amount thereof, as the case may be, to the Minister.

(2) A person on account or in respect of whom any amount of money is paid under this Act or the regulations when such a person is not entitled to have such amount of money so paid or on account or in respect of whom an amount of money in excess of the sum which that person is entitled to have paid is paid, shall forthwith pay over the amount thereof to the Minister.

(3) Where a person receives or obtains any amount of money referred to in subsection (1) or on account or in respect of whom any amount of money referred to in subsection (2) is paid, the amount thereof is a civil debt owing from such person to the Minister and the Minister may sue for and recover such amount as such civil debt.

(4) Notwithstanding subsection (3), where a person referred to in subsection (1) or (2) is or subsequently becomes entitled to any amount of money

under this Act or any other amount of money from the Government of the province, the amount of indebtedness referred to in subsection (3) may be deducted and retained by the Minister from the amount of money to which that person is or becomes entitled under this Act or otherwise from the Government of the province.

(5) Subsections (1) to (4) shall apply, notwithstanding the fact that any person referred to in any of those subsections is liable to be, has been or it is intended that the person shall be, prosecuted for an offence arising out of his or her receipt or obtaining of any amount of money referred to in subsection (1) or on account of or in respect of whom any amount of money referred to in subsection (2) is paid.

No right to
payments

9. No person is entitled as a matter of right to receive or obtain or have paid on account of or in respect of that person any amount of money authorized by or under this Act or the regulations.

Consolidated
Revenue Fund

10. Any payments required to be made by the Minister or 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, and any amounts of money paid to or recovered by the Minister under the provisions of this Act or the regulations shall be paid into the Consolidated Revenue Fund.

Offences

11.(1) A person shall not knowingly receive or obtain any amount of money under this Act or the regulations to which that person is not entitled.

(2) A person shall not knowingly benefit from the payment of any amount of money paid on account of or in respect of that person under this Act or the regulations when that person is not entitled to so benefit.

(3) A person shall not knowingly aid or abet another person to receive or obtain any amount of money under this Act or the regulations to which that other person is not entitled.

(4) A person shall not knowingly aid or abet another person to benefit from the payment of any amount of money under this Act or the regulations when such other person is not entitled to so benefit.

Actions in
Attorney
General's
name

12. All actions, suits and other proceedings taken by the Minister for the enforcement of any agreement or for the recovery of any amount of money under this Act or for the recovery of damages in tort or arising out of contract shall be instituted in the name of Her Majesty's Attorney General for the province.

Penalty

13. 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 thousand dollars and in the case of a second or subsequent conviction for a similar offence to a fine not exceeding two thousand dollars or in either case, to imprisonment for a term not exceeding three months.

RSN c.386
Repealed

14. The University Fees and Allowances Act is repealed.

Commencement

15. This Act is deemed to have come into force on the first day of September, 1982.



CHAPTER 27

AN ACT TO AMEND THE PRISONS ACT, THE
ROYAL NEWFOUNDLAND CONSTABULARY ACT
AND THE ST. JOHN'S FIRE DEPARTMENT
ACT, 1972

(Assented to June 17, 1986)

Analysis

Section:

- 1. THE PRISONS ACT
S.10 Amdt.
Regulations
- 2. THE ROYAL NEWFOUNDLAND
CONSTABULARY ACT
S.28 Amdt.
Regulations

Section:

- 3. THE ST. JOHN'S
FIRE DEPARTMENT
ACT, 1972
S.28 Amdt.
Regulations

Be it enacted by the Lieutenant-Governor and House of
Assembly in Legislative Session convened, as follows:

THE PRISONS ACT

RSN 1970 c.305
as amended

1.(1) Paragraph (q) of subsection
(1) of section 10 of The Prisons Act is
repealed and the following substituted:

"(q) providing for the summary
trial, by a disciplinary tri-
bunal, of members of the staff
or prisoners charged with
offences against the regulat-
ions and of members of the
staff charged with offences
against the rules made under
subsection (3);

(q.1) respecting the composition of
a disciplinary tribunal re-
ferred to in paragraph (q);

(q.2) providing for the compulsory attendance of the accused and of witnesses and providing for the administration of oaths;"

(2) Paragraph (t) of subsection (1) of section 10 of the said Act is repealed and the following substituted:

"(t) providing for an appeal from a decision of a disciplinary tribunal constituted under the regulations; and".

THE ROYAL NEWFOUNDLAND
CONSTABULARY ACT

RSN 1970 c.58
as amended

2.(1) Subparagraph (i) of paragraph (h) of subsection (1) of section 28 of The Royal Newfoundland Constabulary Act is repealed and the following substituted:

"(i) providing for the summary trial, by a disciplinary tribunal, of members charged with offences against the regulations,

(i.1) respecting the composition of a disciplinary tribunal referred to in subparagraph (i),".

(2) Paragraph (i) of subsection (1) of section 28 of the said Act is repealed and the following substituted:

"(i) providing for an appeal from a decision of a disciplinary tribunal constituted under the regulations;"

(3) Subsection (6) of section 28

of the said Act is amended by striking out the word "member" and substituting the words "member of a disciplinary tribunal".

THE ST. JOHN'S FIRE DEPARTMENT
ACT, 1972

1972 No. 12
as amended

3.(1) Paragraph (h) of subsection (1) of section 28 of The St. John's Fire Department Act, 1972 is amended by striking out the words "by a member or members, designated in the regulations by rank, name or otherwise howsoever" and substituting the words "by a disciplinary tribunal".

(2) Paragraph (i) of subsection (1) of section 28 of the said Act is repealed and the following substituted:

"(i) respecting the composition of a disciplinary tribunal referred to in paragraph (h);

(i.1) providing for an appeal from a decision of a disciplinary tribunal constituted under the regulations;"

(3) Paragraph (b) of subsection (7) of section 28 of the said Act is repealed and the following substituted;

"(b) at the time and place appointed in the written charge the accused shall be brought before the disciplinary tribunal that is to try the offence;"

(4) Paragraph (e) of subsection (7) of section 28 of the said Act is amended by striking out the words "mem-

ber or members" and substituting the words "disciplinary tribunal".

(5) Paragraph (h) of subsection (7) of section 28 of the said Act is amended by striking out the words "the member or members presiding at the trial" and substituting the words "a disciplinary tribunal".

(6) Subsection (8) of section 28 of the said Act is repealed and the following substituted:

"(8) A member of a disciplinary tribunal appointed under the regulations has all the powers that are or may be conferred on a Commissioner by or under The Public Enquiries Act and a disciplinary tribunal is deemed to be an "investigating body" for the purposes of The Evidence (Public Investigations) Act.".



CHAPTER 28

AN ACT TO AMEND THE INCOME TAX ACT

(Assented to June 17, 1986)

Analysis

Section:

1. S.4 Amdt.
Income outside province
2. S.4(5) Amdt.
Foreign tax credits
3. S.5(4) Amdt.
Corporation tax
4. S.10(1) Amdt.
Returns on prescribed form
5. S.12 Amdt.
Rules re assessment
6. S.13 Amdt.
Withholding
7. S.14(1) Amdt.
Farmers and fishermen
8. S.16 Amdt.
Payment by corporation
9. S.19(7.1) Added
Interest
10. S.19(1) R&S.
Interest
11. S.19(2.1) Added
Interest
12. S.22 Amdt.
Interest on overpayments

Section:

13. S.22(6) R&S.
Definition of overpayment
14. S.22 Amdt.
Refunds & assessment
15. S.23(5) R&S.
Objection to assessments
16. S.24 Amdt.
Appeal
17. S.30 Amdt.
Security for payment of taxes
18. S.35 Amdt.
Garnishment
19. Ss. Added
35.1 Acquisition of debtor's property
35.2 Payment of moneys seized from tax debtor
20. S.38(8) R&S.
Assessment for amount withheld
21. S.38(6) Amdt.
Penalty
22. S.38.1 Added
Liability of directors

Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

RSN 1970
c.163 as
amended

1.(1) Section 4 of The Income Tax Act is amended by adding immediately after subsection (2.2) the following:

"(2.3) For the 1982 taxation year, the tax payable by an individual described in paragraph (a) of subsection (2) of section 4 for the year is the amount equal to the aggregate of

- (a) the amount determined under subsection (2) for the year; and
- (b) an amount that bears the same relation to the product of the amount added under subsection (2) of section 120.1 of the Federal Act for the year by the percentage specified in subsection (3) for the year that his or her income earned in the taxation year outside the province bears to his or her income for the year.

(2.4) For the 1982 taxation year, the tax payable by an individual described in paragraph (b) of subsection (2) of section 4 for the year is the amount by which

- (a) the amount determined under subsection (2) for the year

exceeds

- (b) an amount that bears the same relation to the product of the amount added under subsection (2) of section 120.1 of the Federal Act for the

year by the percentage specified in subsection (3) for the year that his or her income earned in the taxation year in the province bears to his or her income for the year.

(2.5) An individual to whom section 3 is applicable for a taxation year is deemed to have paid on account of his or her tax for the year an amount equal to the product of

- (a) an amount that bears the same relation to the excess determined under subsection (4) of section 120.1 of the Federal Act for the year that his or her income earned in the taxation year in the province bears to his or her income for the year

multiplied by

- (b) the percentage specified in subsection (3) for the year."

(2) Paragraph (b) of subsection (5) of section 4 of the said Act is repealed and the following substituted:

"(b) that proportion of the tax otherwise payable under this Act for that taxation year, not including the tax payable under subsection (2.1), that

- (i) the aggregate of the taxpayer's incomes from sources in that country, excluding any portion thereof that was deductible by the taxpayer for

the year under subparagraph (i) of paragraph (f) of subsection (1) of section 110 of the Federal Act,

(A) for that year, if section 114 of the Federal Act is not applicable, or

(B) if section 114 of the Federal Act is applicable, for the period or periods in the year referred to in paragraph (a) thereof,

on assumption that

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

(D) no amount was deducted under subsection (5) of section 91 of the Federal Act in computing his or her income for that year

is of

(ii) the taxpayer's income earned in Newfoundland

(A) in the year if section 114 of the Federal Act is not applicable, or

(B) if section 114 of the Federal Act is applicable, in the period or periods of the year referred to in

paragraph (a) thereof,

minus any amounts deductible by the taxpayer under paragraph (f) of subsection (1) of section 110, section 110.1, paragraph (b) of subsection (1) of section 111 or section 112 of the Federal Act for the year or such period or periods, as the case may be."

(3) Section 4 of the said Act is amended by adding immediately after subsection (5) the following:

"(5.1) For the purposes of subsection (5), "tax payable" and "tax otherwise payable" means the amount that would, but for section 120.1 of the Federal Act, be the tax otherwise payable under this Act."

(4) Subject to subsection (5) of this section, subsections (1), (2) and (3) of this section are applicable to the 1982 and subsequent taxation years.

(5) Subsection (2.5) of section 4 of the said Act as enacted by subsection (1) of this section is applicable to the 1983 and subsequent taxation years.

2.(1) Subparagraph (i) of paragraph (b) of subsection (5) of section 4 of the said Act is amended by striking out the word "and" at the end of clause (C), by adding the word "and" at the end of clause (D) and by adding thereto immediately after clause (D) the following:

"(E) his income from employment in that country was not from a

source in that country to the extent of the lesser of the amounts determined in respect thereof under paragraphs (c) and (d) of subsection (1) of section 122.3 of the Federal Act for the year,".

(2) All that portion of subparagraph (ii) of paragraph (b) of subsection (5) of section 4 of the said Act following clause (B) is repealed and the following substituted:

"minus any amounts deductible under paragraph (d) of subsection (1) of section 110, section 110.1, paragraph (b) of subsection (1) of section 111 or section 112 of the Federal Act for the year or such period or periods, as the case may be.".

(3) Subsections (1) and (2) are applicable to the 1984 and subsequent taxation years.

3.(1) Paragraph (a) of subsection (4) of section 5 of the said Act is repealed and the following substituted:

"(a) ten per cent of an amount calculated by allocating to the province, on the same basis as set out under the regulations made under paragraph (a) of subsection (4) of section 124 of the Federal Act that is the least of the amounts calculated under paragraphs (a), (b) and (c) of subsection (1) of section 125 of the Federal Act and allowed for the purposes of subsection (1) of section 125 of the Federal Act; and"

(2) Subsection (1) is applicable to the 1985 and subsequent taxation years.

4.(1) Subsection (1) of section 10 of the said Act is amended by striking out all that portion of subsection (1) preceding paragraph (a) and by substituting the following:

"10.(1) A return for each taxation year in the case of a corporation (other than a corporation that was a registered charity throughout the year) and for each taxation year for which a tax is payable, or would be payable if this Part were read without reference to sections 127.2 and 127.3 of the Federal Act, in the case of an individual shall, without notice or demand therefor, be filed with the Minister of Finance in prescribed form and containing prescribed information,".

(2) Subsection (1) is applicable to the 1983 and subsequent taxation years.

5.(1) Subparagraph (ii) of paragraph (a) of subsection (4) of section 12 of the said Act is amended by striking out the words "four years" and by substituting the words "three years".

(2) Paragraph (b) of subsection (4) of section 12 of the said Act is amended by striking out the words "four years" and by substituting the words "three years".

(3) Subsection (4A) of section 12 of the said Act is amended by striking out all that portion of subsection (4A) preceding paragraph (a) and by substituting the following:

"(4A) Notwithstanding subsection (4), there shall not be included in computing the income of a taxpayer, for the purposes of any reassessment, additional assessment or assessment of tax, interest or penalties under this Part that is made after the expiration of three years from the day referred to in subparagraph (ii) of paragraph (a) of subsection (4), any amount that was not included in his or her income for the purposes of an assessment of tax made before the expiration of three years from that day and".

(4) Section 12 of the said Act is further amended by adding immediately after subsection (4A) the following:

"(4B) Where the Minister of Finance would, but for this subsection, be entitled to reassess, make an additional assessment or assess tax, interest or penalties by virtue only of the filing of a waiver under subparagraph (ii) of paragraph (a) of subsection (4), the Minister of Finance may not make such reassessment, additional assessment or assessment after the day that is six months after the date on which a notice of revocation of the waiver in prescribed form is filed."

(5) Subsections (1), (2) and (3) are applicable to the 1983 and subsequent taxation years.

(6) Subsection (4) is applicable after February 15, 1984.

6.(1) Subsection (1) of section 13 of the said Act is amended by deleting all that portion of subsection (1) that

precedes paragraph(b) and by substituting the following:

"13.(1) Every person paying at any time in a taxation year

(a) salary or wages or other remuneration;"

(2) Paragraph (i) of subsection (1) of section 13 of the said Act is repealed and the following substituted:

"(i) a training allowance under the National Training Act (Canada);"

(3) Subsection (1) of section 13 of the said Act is amended by deleting all that portion of subsection (1) that follows paragraph (k) and by substituting the following:

"(l) a payment out of or under a registered retirement income fund;

(m) an amount as a benefit under the Labour Adjustment Benefits Act (Canada); or

(n) one or more amounts to an individual who has elected for the year in prescribed form in respect of all such amounts,

shall deduct or withhold therefrom such amount as may be determined in accordance with prescribed rules and shall, at such time as may be prescribed, remit that amount to the Minister of Finance on account of the payee's tax for the year under this Act."

(4) Subsection (2) of section 13 of the said Act is repealed and the following substituted:

"(2) Where amounts have been deducted or withheld under this section from the remuneration or other payments received by an individual in a taxation year, if the total of such amounts is equal to or greater than three-quarters of the tax payable for the year, the individual shall on or before April 30 in the next year, pay to the Minister of Finance the remainder of his or her tax for the year as estimated under section 11."

(5) Subsections (1) and (4) of this section are applicable after March 29, 1983.

(6) Subsection (2) of this section is applicable after August 1, 1982.

(7) Subsection (3) of this section is applicable after March 29, 1983 except that paragraph (m) of subsection (1) of section 13 of the said Act, as enacted by subsection (3) of this section, is applicable with respect to amounts paid after 1981, except that in its application to payments made after November 12, 1981 in respect of a termination of an office of employment that occurred on or before that date, that paragraph shall be read as follows:

"(m) a termination payment;"

7.(1) Subsection (1) of section 14 of the said Act is amended by striking out all that portion of subsection (1) preceding paragraph (a) and by substituting the following:

"14.(1) Every individual whose chief source of income is

farming or fishing, other than an individual to whom subsection (2) of section 13 applies, shall pay to the Minister of Finance".

(2) This section is applicable after March 29, 1983.

8.(1) Section 16 of the said Act is amended by adding immediately after subsection (5) the following:

(5.1) Where the tax payable under this Part (computed without reference to sections 127.2 and 127.3 of the Federal Act) by a corporation for a taxation year or its first instalment base for the year is not more than \$1000, the corporation may, instead of paying the instalments required by paragraph (a) of subsection (1) for the year, pay to the Minister of Finance, pursuant to paragraph (b) of subsection (1), all of its tax as estimated by it under section 11 for the year."

(2) Subsection (1) is applicable to the 1984 and subsequent taxation years.

9.(1) Section 19 of the said Act is amended by adding immediately after subsection (7) the following:

"(7.1) Notwithstanding any other provision in this section, where the tax payable under this Act by a taxpayer for a taxation year is increased by virtue of an adjustment of an income or profits tax payable by the taxpayer to the government of a country other than Canada or to the government of a state, province or other political subdivision of any such country, no interest is payable, in respect of

such increase in the taxpayer's tax payable, for the period ending ninety days after the day on which the taxpayer is first notified of the amount of the adjustment."

(2) This section is applicable with respect to notifications made after 1980.

10.(1) Subsection (1) of section 19 of the said Act is repealed and the following substituted:

"19.(1) Where at any time after the day on or before which a return of a taxpayer's income was required to be filed under this Act for a taxation year,

(a) the amount of his or her tax payable for the year under this Act

exceeds,

(b) the aggregate of all amounts each of which is an amount paid at or before that time on account of his or her tax payable and applied as at that time by the Minister of Finance against the taxpayer's liability for an amount payable under this Act for the year,

the person liable to pay the tax shall pay interest on such excess, for the period after April 19, 1983 during which it is outstanding, at such rates per annum as are prescribed and are in effect from time to time during the period for the purposes of subsection (1) of section 161 of the Federal Act."

(2) Subsection (1) is applicable after April 19, 1983.

11.(1) Section 19 of the said Act is amended by adding immediately after subsection (2) the following:

"(2.1) Where the aggregate of all amounts each of which is an amount of interest payable by a taxpayer under subsection (2) or under subsection (2) of section 161 of the Federal Act does not exceed twenty-five dollars for a taxation year, the Minister of Finance shall not assess such interest."

(2) Subsection (1) is applicable to the 1984 and subsequent taxation years.

12.(1) Subsection (3) of section 22 of the said Act is repealed and the following substituted:

"(3) Where an amount in respect of an overpayment for a taxation year is refunded, or applied under this section on other liability, interest at the rate per annum prescribed for the purpose of subsection (3) of section 164 of the Federal Act shall be paid or applied thereon for the period beginning with the latest of

- (a) the day when the overpayment arose;
- (b) the day on or before which the return of income for the year was required to be filed or would have been required to be filed if tax were payable for the year; and

(c) the day when the return of income for the year was actually filed,

and ending with the day of refunding or application aforesaid, unless the amount of the interest so calculated is less than one dollar, in which event no interest shall be paid or applied under this subsection.

(3.1) Where, at any particular time, interest has been paid to, or applied to a liability of, a taxpayer pursuant to subsection (3) in respect of an overpayment and it is determined at a subsequent time that the actual overpayment was less than the overpayment in respect of which interest was paid or applied, the following rules apply:

1. The amount by which the interest that has been paid or applied exceeds the interest, if any, computed in respect of the amount that is determined at the subsequent time to be the actual overpayment shall be deemed to be an amount (in this subsection referred to as "the amount payable") that became payable under this Act by the taxpayer at the particular time.

2. The taxpayer shall pay interest, at the rate prescribed for the purposes of subsection (1) of section 161 of the Federal Act, on the amount payable for the period beginning at the particular time and ending on the date of payment.

3. The Minister of Finance may at any time assess the taxpayer in

respect of the amount payable and, where the Minister of Finance makes such an assessment, the provisions of this Act are applicable, with such modifications as the circumstances require, in respect of the assessment as though it had been made under section 12 of this Act."

(2) Subsection (1) is applicable with respect to interest paid or applied after April 19, 1983.

13.(1) Subsection (6) of section 22 of the said Act is repealed and the following substituted:

"(6) In this section, "overpayment" of a taxpayer for a taxation year means the aggregate of all amounts paid on account of his or her tax under this Act for the year minus all amounts payable by him or her under this Act for the year."

(2) Subsection (1) is applicable to the 1983 and subsequent taxation years.

14.(1) Subsections (1) and (2) of section 22 of the said Act are repealed and the following substituted:

"22.(1) If the return of a taxpayer's income for a taxation year has been made within three years from the end of the year, the Minister of Finance

(a) may, on or after mailing notice of assessment for the year, refund, without application therefor, any overpayment made on account of the tax; and

(b) shall, with all due dispatch, make such a refund after mailing the notice of assessment if application therefor has been made in writing by the taxpayer within three years from the end of the year.

(2) Instead of making a refund or repayment that might otherwise be made under this section, the Minister of Finance may, where the taxpayer is liable or about to become liable to make any payment under this Act, apply the amount of the refund or overpayment to that other liability and notify the taxpayer of that action."

(2) Section 22 of the said Act is further amended by adding immediately after subsection (4) the following:

"(4.1) Where the Supreme Court of Newfoundland or the Supreme Court of Canada has, on the disposition of an appeal in respect of taxes, interest or a penalty payable under this Act by a taxpayer resident in Canada,

- (a) referred an assessment back to the Minister of Finance for reconsideration and reassessment;
- (b) varied or vacated an assessment; or
- (c) ordered the Minister of Finance to repay tax, interest or penalties,

the Minister of Finance with all due dispatch, whether or not an appeal from the decision of the

Court has been or may be instituted,

- (d) where the assessment has been referred back to him or her, reconsider the assessment and make a reassessment in accordance with the decision of the Court, unless otherwise directed in writing by the taxpayer;
- (e) refund any overpayment resulting from the variation, vacation or reassessment; and
- (f) where paragraph (c) is applicable, repay any tax, interest or penalties as ordered,

and the Minister of Finance may repay any tax, interest or penalties or surrender any security accepted therefor by him or her to any other taxpayer who has filed an objection or instituted an appeal if, having regard to the reasons given on the disposition of the appeal, he or she is satisfied that it would be just and equitable to do so, but for greater certainty, the Minister of Finance may, in accordance with the provisions of this Act, The Judicature Act or the Supreme Court Act (Canada) as they relate to appeals from decisions of the Supreme Court of Newfoundland, appeal from the decision of the Court notwithstanding any variation or vacation of any assessment by the Court or reassessment made by the Minister of Finance under paragraph (d), and any such appeal from a decision of the Supreme Court of Newfoundland shall proceed as if it

were an appeal from the assessment that was referred back, varied or vacated."

(3) Subsection (1) of section 22 of the said Act as enacted by subsection (1) of this section, is applicable with respect to refunds for the 1983 and subsequent taxation years.

(4) Subsection (2) of section 22 of the said Act, as enacted by subsection (1) of this section and subsection (2) of this section are applicable after February 15, 1984.

15.(1) Subsection (5) of section 23 of the said Act is repealed and the following substituted:

"(5) A reassessment made by the Minister of Finance pursuant to subsection (3) is not invalid by reason only of not having been made within three years from the day of mailing of a notice of an original assessment or of a notification described in subsection (4) of section 12."

(2) Subsection (1) is applicable with respect to the 1983 and subsequent taxation years.

16.(1) Paragraph (b) of subsection (1) of section 24 of the said Act is repealed and the following substituted:

"(b)ninety days have elapsed after service of notice of objection and the Minister of Finance has not notified the taxpayer that the Minister has vacated or confirmed the assessment or reassessed,".

(2) Subsection (1) is applicable to notices of objection served after the day on which this Act is assented to.

17.(1) Subsection (3) of section 30 of the said Act is repealed and the following substituted:

"(3) The Minister of Finance may, if the Minister considers it advisable in a particular case, accept security for payment of any amount that is or may become payable under this Act.

(3.1) Where at any time a taxpayer requests in writing that the Minister of Finance surrender any security accepted by the Minister of Finance under subsection (3), the Minister of Finance shall surrender the security to the extent that the amount thereof exceeds the amount for which the security was accepted that is payable at that time."

(2) Subsection (1) is applicable after February 15, 1984.

18.(1) Subsections (1) and (1.1) of section 35 of the said Act are repealed and the following substituted:

"35.(1) Where the Minister of Finance has knowledge or suspects that a person is or will be, within ninety days, liable to make a payment to another person who is liable to make a payment under this Act (in this section referred to as the "tax debtor"), the Minister may, by registered letter or by a letter served personally, require that person to pay forthwith, where the moneys are immediately payable, and, in any other case, as and when the moneys become payable, the

moneys otherwise payable to the tax debtor in whole or in part to the Minister of Finance on account of the tax debtor's liability under this Act.

(1.1) Without limiting the generality of subsection (1), where the Minister of Finance has knowledge or suspects that within ninety days

- (a) a bank, credit union, trust company or other similar person (in this section referred to as the "institution") will loan or advance moneys to, or make a payment on behalf of, or make a payment in respect of a negotiable instrument issued by, a tax debtor who is indebted to the institution and who has granted security in respect of the indebtedness; or
- (b) a person, other than an institution, will loan or advance moneys to, or make a payment on behalf of, a tax debtor who the Minister of Finance knows or suspects
 - (i) is employed by, or is engaged in providing services or property to, that person or was or will be, within ninety days, so employed or engaged, or
 - (ii) where that person is a corporation, is not dealing at arm's length with that person,

the Minister may, by registered letter or by a letter served personally, require the institution or person, as the case may be, to pay in whole or in part to the Minister of Finance on account of the tax debtor's liability under this Act the moneys that would otherwise be so loaned, advanced or paid and any moneys so paid to the Minister of Finance shall be deemed to have been loaned, advanced or paid, as the case may be, to the tax debtor."

(2) Subsection (4.1) of section 35 of the said Act is repealed and the following substituted:

"(4.1) Every institution or person that fails to comply with a requirement under subsection (1.1) with respect to moneys to be loaned, advanced or paid is liable to pay to Her Majesty in right of the province an amount equal to the lesser of

- (a) the aggregate of moneys so loaned, advanced or paid; and
- (b) the amount that the institution or person was required under that subsection to pay to the Minister of Finance."

(3) This section is applicable after March 29, 1983.

19.(1) The said Act is amended by adding immediately after section 35 the following:

Acquisition
of debtor's
property

"35.1 For the purpose of collecting debts owed by a person to Her Majesty in right of the

province under this Act, the Minister of Finance may purchase or otherwise acquire any interest in the person's property that the Minister of Finance is given a right to acquire in legal proceedings or under a court order or that is offered for sale on redemption and may dispose of any interest so acquired in such a manner as he considers reasonable.

Payment of
moneys seized
from tax
debtor

35.2(1) Where the Minister of Finance has knowledge or suspects that a person is holding moneys that were seized by a police officer in the course of administering or enforcing the criminal law of Canada from another person who is liable to make a payment under this Act (in this section referred to as the "tax debtor") and that are restorable to the tax debtor, the Minister may, by registered letter or by a letter served personally, require that person to turn over the moneys otherwise restorable to the tax debtor in whole or in part to the Minister of Finance on account of the tax debtor's liability under this Act.

(2) The receipt of the Minister of Finance for moneys turned over as required by this section is a good and sufficient discharge of the requirement to restore the moneys to the tax debtor to the extent of the amount so turned over."

(2) This section is applicable after March 29, 1983.

20.(1) Subsection (8) of section 38 of the said Act is repealed and the following substituted:

"(8) The Minister of Finance may assess any person for any amount that has been deducted or withheld by that person under this Act or a regulation or that is payable by that person under this section, section 38.1 or 43 and, upon his or her sending a notice of assessment to that person, Divisions I and J of the Federal Act are applicable mutatis mutandis."

(2) Subsection (1) is applicable after November 12, 1981.

21.(1) Subsection (6) of section 38 of the said Act is amended by striking out all that portion of subsection (3) that follows paragraph (b) and substituting the following:

"together with interest on the amount that should have been deducted or withheld, at the rate per annum prescribed for the purposes of subsection (8) of section 227 of the Federal Act."

(2) Subsection (1) is applicable after February 15, 1984.

22.(1) The said Act is amended by adding immediately after section 38 the following:

Liability
of directors

"38.1(1) Where a corporation has failed to deduct or withhold an amount as required by section 13 or has failed to remit such an amount, the directors of the corporation at the time the corporation was required to deduct or withhold the amount, or remit the amount, are jointly and severally liable, together with the corporation, to pay any amount that the corporation is liable to pay under this Act in respect of that amount, including

any interest or penalties related thereto.

(2) A director is not liable under subsection (1), unless

- (a) a certificate for the amount of the corporation's liability referred to in that subsection has been registered in the Trial Division under subsection (2) of section 33 and execution for such amount has been returned unsatisfied in whole or in part;
- (b) the corporation has commenced liquidation or dissolution proceedings or has been dissolved and a claim for the amount of the corporation's liability referred to in that subsection has been proved within six months after the earlier of the date of commencement of the proceedings and the date of dissolution; or
- (c) the corporation has made an assignment or a receiving order has been made against it under the Bankruptcy Act and a claim for the amount of the corporation's liability referred to in that subsection has been proved within six months after the date of the assignment or receiving order.

(3) A director is not liable for a failure under subsection (1) where the director exercised the

degree of care, diligence and skill to prevent the failure that a reasonably prudent person would have exercised in comparable circumstances.

(4) No action or proceedings to recover any amount payable by a director of a corporation under subsection (1) shall be commenced more than two years after the director last ceased to be a director of that corporation.

(5) Where execution referred to in paragraph (a) of subsection (2) has issued, the amount recoverable from a director is the amount remaining unsatisfied after execution.

(6) Where a director pays an amount in respect of a corporation's liability referred to in subsection (1) that is proved in liquidation, dissolution or bankruptcy proceedings, the director is entitled to any preference that Her Majesty in right of the province would have been entitled to had such amount not been so paid and, where a certificate that relates to such amount has been registered, the director is entitled to an assignment of the certificate to the extent of his or her payment which assignment the Minister of Finance is hereby empowered to make.

(7) A director who has satisfied a claim under this section is entitled to contribution from the other directors who were liable for the claim."

(2) This section is applicable with respect to amounts required to be

deducted and remitted, or withheld and remitted, after November 12, 1981.



CHAPTER 29

AN ACT TO IMPLEMENT THE CONVENTION BETWEEN CANADA AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND PROVIDING FOR THE RECIPROCAL RECOGNITION AND ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS

(Assented to June 17, 1986)

Analysis

Section:

- 1. Short title
- 2. Interpretation
- 3. Duty of Attorney General
- 4. Convention in force

Section:

- 5. Notice of effective date
 - 6. Regulations
 - 7. Conflict with other Act
- Schedule

Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

Short title

1. This Act may be cited as The Canada and the United Kingdom Reciprocal Recognition and Enforcement of Judgments Act.

Interpretation

2. In this Act, "convention" means the Convention for the Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters set out in the Schedule hereto.

Duty of Attorney General

3. The Attorney General shall

(a) request the Government of Canada to designate the province as a province to which the convention extends; and

- (b) determine the courts of the province to which application for registration of a judgment given by a court of the United Kingdom may be made and request the Government of Canada to designate those courts for the purpose of the convention.

Convention
in force

4. On, from and after the date the convention enters into force in respect of the province as determined by the convention, the convention is in force in the province and the provisions thereof are law in the province.

Notice of
effective
date

5. The Attorney General shall cause to be published in the Gazette the date the convention comes into force in the province and the courts to which application for registration of a judgment given by a court of the United Kingdom may be made.

Regulations

6. The Lieutenant-Governor in Council may make such regulations as are necessary to carry out the intent and purpose of this Act.

Conflict
with other
Act

7. Where there is a conflict between this Act and any other Act, this Act prevails.

SCHEDULE

CONVENTION BETWEEN CANADA AND THE UNITED
KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
PROVIDING FOR THE RECIPROCAL RECOGNITION AND
ENFORCEMENT OF JUDGMENTS IN CIVIL AND
COMMERCIAL MATTERS

Canada,

and

The United Kingdom of Great Britain and Northern
Ireland,

DESIRING to provide on the basis of reciprocity
for the recognition and enforcement of judgments in
civil and commercial matters;

HAVE AGREED AS FOLLOWS:

PART I

DEFINITIONS

ARTICLE I

In this Convention

- (a) "appeal" includes any proceeding by way of discharging or setting aside a judgment or an application for a new trial or a stay of execution;
- (b) "the 1968 Convention" means the Convention of 27th September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters as amended;

- (c) "court of a Contracting State" means
- (i) in relation to the United Kingdom, any court of the United Kingdom or of any territory to which this Convention extends pursuant to Article XIII;
 - (ii) in relation to Canada, the Federal Court of Canada or any court of a province or territory to which this Convention extends pursuant to Article XII,
- and the expressions "court of the United Kingdom" and "court of Canada" shall be construed accordingly;
- (d) "judgment" means any decision, however described (judgment, order and the like), given by a court in a civil or commercial matter, and includes an award in proceedings on an arbitration if the award has become enforceable in the territory of origin in the same manner as a judgment given by a court in that territory;
- (e) "judgment creditor" means the person in whose favour the judgment was given, and includes his executors, administrators, successors and assigns;
- (f) "judgment debtor" means the person against whom the judgment was given and includes any person against whom the judgment is enforceable under the law of the territory of origin;
- (g) "original court" in relation to any judgment means the court by which the judgment was given;
- (h) "registering court" means a court to which an application for the registration of a judgment is made;

- (i) "territory of origin" means the territory for which the original court was exercising jurisdiction.

PART II

SCOPE OF THE CONVENTION

ARTICLE II

1. Subject to the provisions of this Article, this Convention shall apply to any judgment given by a court of a Contracting State after the Convention enters into force and, for the purposes of Article IX, to any judgment given by a court of a third State which is party to the 1968 Convention.

2. This Convention shall not apply to

- (a) orders for the periodic payment of maintenance;
- (b) the recovery of taxes, duties or charges of a like nature or the recovery of a fine or penalty;
- (c) judgments given on appeal from decisions of tribunals other than courts;
- (d) judgments which determine
 - (i) the status or legal capacity of natural persons;
 - (ii) custody or guardianship of infants;
 - (iii) matrimonial matters;
 - (iv) succession to or the administration of the estates of deceased persons;
 - (v) bankruptcy, insolvency or the winding up of companies or other legal persons;

(vi) the management of the affairs of a person not capable of managing his own affairs.

3. Part III of this Convention shall apply only to a judgment whereby a sum of money is made payable.

4. This Convention is without prejudice to any other remedy available to a judgment creditor for the recognition and enforcement in one Contracting State of a judgment given by a court of the other Contracting State.

PART III

ENFORCEMENT OF JUDGMENTS

ARTICLE III

1. Where a judgment has been given by a court of one Contracting State, the judgment creditor may apply in accordance with Article VI to a court of the other Contracting State at any time within a period of six years after the date of the judgment (or, where there have been proceedings by way of appeal against the judgment, after the date of the last judgment given in those proceedings) to have the judgment registered, and on any such application the registering court shall, subject to such simple and rapid procedures as each Contracting State may prescribe and to the other provisions of this Convention, order the judgment to be registered.

2. In addition to the sum of money payable under the judgment of the original court including interest accrued to the date of registration, the judgment shall be registered for the reasonable costs of and incidental to registration, if any, including the costs of obtaining a certified copy of the judgment from the original court.

3. If, on an application for the registration of a judgment, it appears to the registering court that the judgment is in respect of different matters and that some, but not all, of the provisions of the judgment

are such that if those provisions had been contained in separate judgments those judgments could properly have been registered, the judgment may be registered in respect of the provisions aforesaid but not in respect of any other provisions contained therein.

4. Subject to the other provisions of this Convention

- (a) a registered judgment shall, for the purposes of enforcement, be of the same force and effect;
- (b) proceedings may be taken on it; and
- (c) the registering court shall have the same control over its enforcement,

as if it had been a judgment originally given in the registering court with effect from the date of registration.

ARTICLE IV

1. Registration of a judgment shall be refused or set aside if

- (a) the judgment has been satisfied;
- (b) the judgment is not enforceable in the territory of origin;
- (c) the original court is not regarded by the registering court as having jurisdiction;
- (d) the judgment was obtained by fraud;
- (e) enforcement of the judgment would be contrary to public policy in the territory of the registering court;
- (f) the judgment is a judgment of a country or territory other than the territory of origin which has been registered in the original

court or has become enforceable in the territory of origin in the same manner as a judgment of that court; or

- (g) in the view of the registering court the judgment debtor either is entitled to immunity from the jurisdiction of that court or was entitled to immunity in the original court and did not submit to its jurisdiction.

2. The law of the registering court may provide that registration of a judgment may or shall be set aside if

- (a) the judgment debtor, being the defendant in the original proceedings, either was not served with the process of the original court or did not receive notice of those proceedings in sufficient time to enable him to defend the proceedings and, in either case, did not appear;
- (b) another judgment has been given by a court having jurisdiction in the matter in dispute prior to the date of judgment in the original court; or
- (c) the judgment is not final or an appeal is pending or the judgment debtor is entitled to appeal or to apply for leave to appeal against the judgment in the territory of origin.

3. If at the date of the application for registration the judgment of the original court has been partly satisfied, the judgment shall be registered only in respect of the balance remaining payable at that date.

4. A judgment shall not be enforced so long as, in accordance with the provisions of this Convention and the law of the registering court, it is competent for any party to make an application to have the registration of the judgment set aside or, where such an application is made, until the application has been finally determined.

ARTICLE V

1. For the purposes of Article IV(1)(c) the original court shall be regarded as having jurisdiction if

- (a) the judgment debtor, being a defendant in the original court, submitted to the jurisdiction of that court by voluntarily appearing in the proceedings;
- (b) the judgment debtor was plaintiff in, or counterclaimed in, the proceedings in the original court;
- (c) the judgment debtor, being a defendant in the original court, had before the commencement of the proceedings agreed, in respect of the subject matter of the proceedings, to submit to the jurisdiction of that court or of the courts of the territory of origin;
- (d) the judgment debtor, being a defendant in the original court, was at the time when the proceedings were instituted habitually resident in, or being a body corporate had its principal place of business in, the territory of origin;
- (e) the judgment debtor, being a defendant in the original court, had an office or place of business in the territory of origin and the proceedings were in respect of a transaction effected through or at that office or place;
or
- (f) the jurisdiction of the original court is otherwise recognized by the registering court.

2. Notwithstanding anything in sub-paragraphs (d), (e) and (f) of paragraph (1), the original court shall not be regarded as having jurisdiction if

- (a) the subject matter of the proceedings was immovable property outside the territory of origin; or
- (b) the bringing of the proceedings in the original court was contrary to an agreement under which the dispute in question was to be settled otherwise than by proceedings in the courts of the territory of origin.

PART IV

PROCEDURES

ARTICLE VI

1. Any application for the registration in the United Kingdom of a judgment of a court of Canada shall be made

- (a) in England and Wales, to the High Court of Justice;
- (b) in Scotland, to the Court of Session;
- (c) in Northern Ireland, to the High Court of Justice.

2. Any application for the registration in Canada of a judgment of a court of the United Kingdom shall be made

- (a) in the case of a judgment relating to a matter within the competence of the Federal Court of Canada, to the Federal Court of Canada;
- (b) in the case of any other judgment, to a court of a province or territory designated by Canada pursuant to Article XII.

3. The practice and procedure governing registration (including notice to the judgment debtor and applications to set registration aside) shall, except as

otherwise provided in this Convention, be governed by the law of the registering court.

4. The registering court may require that an application for registration be accompanied by
- (a) the judgment of the original court or a certified copy thereof;
 - (b) a certified translation of the judgment, if given in a language other than the language of the territory of the registering court;
 - (c) proof of the notice given to the defendant in the original proceedings, unless this appears from the judgment; and
 - (d) particulars of such other matters as may be required by the rules of the registering court.

ARTICLE VII

All matters concerning

- (a) the conversion of the sum payable under a registered judgment into the currency of the territory of the registering court; and
- (b) the interest payable on the judgment with respect to the period following its registration,

shall be determined by the law of the registering court.

PART V

RECOGNITION OF JUDGMENTS

ARTICLE VIII

Any judgment given by a court of one Contracting State for the payment of a sum of money which could be

registered under this Convention, whether or not the judgment has been registered, and any other judgment given by such a court, which if it were a judgment for the payment of a sum of money could be registered under this Convention, shall, unless registration has been or would be refused or set aside on any ground other than that the judgment has been satisfied or could not be enforced in the territory of origin, be recognized in a court of the other Contracting State as conclusive between the parties thereto in all proceedings founded on the same cause of action.

PART VI

RECOGNITION AND ENFORCEMENT
OF THIRD STATE JUDGMENTS

ARTICLE IX

1. The United Kingdom undertakes, in the circumstances permitted by Article 59 of the 1968 Convention, not to recognise or enforce under that Convention any judgment given in a third State which is a Party to that Convention against a person domiciled or habitually resident in Canada.

2. For the purposes of paragraph (1)

- (a) an individual shall be treated as domiciled in Canada if and only if he is resident in Canada and the nature and circumstances of his residence indicate that he has a substantial connection with Canada; and
- (b) a corporation or association shall be treated as domiciled in Canada if and only if it is incorporated or formed under a law in force in Canada and has a registered office there, or its central management and control is exercised in Canada.

PART VII

FINAL PROVISIONS

ARTICLE X

This Convention shall not affect any conventions, international instruments or reciprocal arrangements to which both Contracting States are or will be parties and which, in relation to particular matters, govern the recognition or enforcement of judgments.

ARTICLE XI

Either Contracting State may, on the exchange of instruments of ratification or at any time thereafter, declare that it will not apply the Convention to a judgment that imposes a liability which that State is under a treaty obligation toward any other State not to recognise or enforce. Any such declaration shall specify the treaty containing the obligation.

ARTICLE XII

1. On the exchange of instruments of ratification, Canada shall designate the provinces or territories to which this Convention shall extend and the courts of the provinces and territories concerned to which application for the registration of a judgment given by a court of the United Kingdom may be made.

2. The designation by Canada may be modified by a further designation given at any time thereafter.

3. Any designation shall take effect three months after the date on which it is given.

ARTICLE XIII

1. The United Kingdom may at any time while this Convention is in force declare that this Convention shall extend to the Isle of Man, any of the Channel Islands, Gibraltar or the Sovereign Base Areas of Akrotiri and Dhekelia (being territories to which the

1968 Convention may be applied pursuant to Article 60 of that Convention).

2. Any declaration pursuant to paragraph (1) shall specify the courts of the territories to which application for the registration of a judgment given by a court of Canada shall be made.

3. Any declaration made by the United Kingdom pursuant to this Article may be modified by a further declaration given any time thereafter.

4. Any declaration pursuant to this Article shall take effect three months after the date on which it is given.

ARTICLE XIV

1. This Convention shall be ratified; instruments of ratification shall be exchanged at London.

2. This Convention shall enter into force three months after the date on which instruments of ratification are exchanged.

3. This Convention may be terminated by notice in writing by either Contracting State and it shall terminate three months after the date of such notice.

IN WITNESS WHEREOF, the undersigned, duly authorized thereto by their respective Governments, have signed this Convention.

DONE in duplicate at Ottawa, this 24th day of April 1984 in the English and French languages, each version being equally authentic.

For the Government of Canada

For the Government of the United Kingdom
of Great Britain and Northern Ireland



CHAPTER 30

AN ACT RESPECTING THE POWER TO APPROVE
BY-LAWS AND REGULATIONS PASSED BY
VARIOUS ASSOCIATIONS OF PROFESSIONALS

(Assented to June 17, 1986)

Analysis

Section:

- 1. Short title
- 2. The Certified Public Accountants Act
- 3. The Denturists Act
- 4. The Law Society Act, 1977
- 5. The Newfoundland Hairdressers' Act

Section:

- 6. The Newfoundland Registered Nurses Act
- 7. The Newfoundland Veterinary Medical Act
- 8. The Public Accountancy Act
- 9. The Social Workers Registration Act

Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

Short title

1. This Act may be cited as The Professional Associations By-laws and Regulations Approval Act.

The Certified Public Accountants Act

RSN 1970
c. 32
as amended

2.(1) Paragraph (b) of subsection (1) of section 8 of The Certified Public Accountants Act is amended by striking out the words "Lieutenant-Governor in Council" and substituting the words "Minister of Consumer Affairs and Communications".

(2) Subsection (2) of section 8 of the said Act is amended by striking out the words "Lieutenant-Governor in Council" and substituting the words "Minister of Consumer Affairs and Communications".

The Denturists Act

1981 c. 42 3. Section 15 of The Denturists Act is amended by striking out the words "Subject to the approval of the Lieutenant-Governor Council and upon the recommendation of the Minister" and substituting the words "Subject to the approval of the Minister".

The Law Society Act, 1977

1977 c. 77
as amended 4. Subsection (2) of section 13 of The Law Society Act, 1977 is amended by striking out the words "Lieutenant-Governor in Council" and substituting the words "Minister of Justice".

The Newfoundland Hairdressers'
Association Act

RSN 1970
c. 260 5.(1) Subsection (1) of section 14 of The Newfoundland Hairdressers' Association Act is amended by striking out the words "Lieutenant-Governor in Council" and substituting the words "Minister of Health".

(2) Subsection (2) of section 14 of the said Act is repealed.

The Newfoundland Registered
Nurses Act

RSN 1970
c. 268
as amended 6. Subsection (1) of section 9 of The Newfoundland Registered Nurses Act is amended by striking out the words "Lieutenant-Governor in Council" and

substituting the words "Minister of Health".

The Newfoundland Veterinary
Medical Act, 1971

1971 No. 73
as amended

7. Section 21 of The Newfoundland Veterinary Medical Act, 1971 is amended by striking out the words "Lieutenant-Governor in Council" and substituting the word "Minister".

The Public Accountancy Act

RSN 1970
c. 313
as amended

8. Subsection (1) of section 25 of The Public Accountancy Act is amended by striking out the words "Lieutenant-Governor in Council" and substituting the words "Minister of Consumer Affairs and Communications".

The Social Workers Registration
Act

1979 c. 4

9. Section 8 of The Social Workers Registrtrion Act is amended by striking out the words "Subject to the approval of the Lieutenant-Governor in Council and upon the recommendation of the Minister" and substituting the words "Subject to the approval of the Minister".



CHAPTER 31

AN ACT TO AMEND THE PUBLIC SERVICE
(PENSIONS) ACT

(Assented to June 17, 1986)

Analysis

Section:

1. S.3(3)(c) Rep.
Application

Section:

2. S.13(1) & (2) Rep.
Age of commencement

Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

RSN 1970
c.319 as
amended

1. Paragraph (c) of subsection (3) of section 3 of The Public Service (Pensions) Act is repealed.

2.(1) Subsections (1) and (2) of section 13 of the said Act are repealed.

(2) Subsection (1) is deemed to have come into force on the thirty-first of December, 1985.



CHAPTER 32

AN ACT TO AMEND THE PIPPY PARK
COMMISSION ACT

(Assented to June 17, 1986)

Analysis

Section:

- 1. Ss. 17 & 18 R&S.
- 17. Budget to be submitted
- 18. Change in budget
- 2. S.21 R&S. Annual Report
- 3. S.24(2) R&S. Report on interim audit

Section:

- 4. S.27(b) Amdt. Power and duties of Commission
- 5. S.28(4) Amdt. Manner of exercising powers
- 6. S.35.1 Added Approval fees

Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

RSN 1970
c.298 as
amended

1. Sections 17 and 18 of The Pippy Park Commission Act are repealed and the following substituted:

Budget to
be submitted

"17. The Commission shall submit to the Minister a budget containing estimates of all sums required during the next financial year for the purposes of the Commission and the budget shall be prepared in accordance with such instructions relating to time, format and detail as may be issued by the Minister.

Change in
budget

18. If in any financial year it appears that the actual revenue

or expenditure of the Commission is likely to be substantially greater or less than estimated in its budget, the Commission may, and if required by the Minister shall, submit to the Minister a revised budget in accordance with section 17 including the particulars of receipts, payments and outstanding liabilities up to the date of submission."

2. Section 21 of the said Act is repealed and the following substituted:

Annual
report

"21.(1) The Commission shall, not later than the thirty-first day of December in each year, prepare and submit to the Minister a financial statement setting forth the assets and liabilities of the Commission and the receipts and expenditures of the Commission for the previous year, together with a report concerning the work of the Commission during the previous financial year.

(2) The statement and report referred to in subsection (1) shall be laid before the Assembly within fifteen days after they are submitted to the Minister if the Assembly is then sitting, and, if not, then within fifteen days after the commencement of the next ensuing session."

3. Subsection (2) of section 24 of the said Act is repealed and the following substituted:

"(2) Whenever the Auditor General makes an interim examination of the accounts of the Commission during the course of a financial year, he shall submit a report

of the examination to the Chairman of the Commission and to the Minister."

4. Paragraph (b) of section 27 of the said Act is repealed and the following substituted:

"(b) to amend, subject to the approval of the Lieutenant-Governor in Council, the Master Plan after consultation with the Planning Advisor, if any;"

5. Subsection (4) of section 28 of the said Act is amended by adding immediately after the words "six members of the Commission" the words "and the amendment to the Master Plan is subject to the approval of the Lieutenant-Governor in Council".

6. The said Act is amended by adding immediately after section 35 the following:

Approval fees

"35.1 Subject to the approval of the Lieutenant-Governor in Council, the Commission may make by-laws fixing fees payable in relation to an approval of an improvement granted under section 33 or 35."



CHAPTER 33

AN ACT TO REMOVE ANOMALIES AND ERRORS
IN THE STATUTE LAW

(Assented to June 17, 1986)

Analysis

Section:

1. Short title
2. City of Corner Brook Act, 1985
3. Commissioners for Oaths Act
4. Department of Public Works and Services Act, 1973
5. Education (Teachers' Pensions) Act
6. Highway Traffic Act
7. Income Tax Savings Plans Act

Section:

8. Jury Act
9. Labour Relations Act, 1977
10. 1985 c. 28
11. Real Estate Trading Act
12. Schools Act
13. Solemnization of Marriage Act, 1974
14. Unified Family Court Act
15. Wild Life Act

Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

Short title

1. This Act may be cited as The Attorney General Statutes Amendment Act, 1986.

1985 c.15

2.(1) Sections 45 to 48 of The City of Corner Brook Act, 1985 are repealed and the following substituted:

Public tenders

"45. The execution of public works, the acquisition of goods or services and the leasing of space by the Council shall be in accord-

ance with The Public Tender Act, 1984, and for the purpose of this section "public works" and "goods or services" have the same meaning as in The Public Tender Act, 1984."

(2) This section comes into force the day The Public Tender Act, 1984 comes into force.

RSN 1970 c.51
as amended

3. Subsection (2) of section 6 of The Commissioner for Oaths Act is repealed and the following substituted:

"(2) For the purposes of this section "municipality" means the City of St. John's, the City of Corner Brook and a town, community, regional council or local service district committee established or continued under The Municipalities Act."

1973 No.30
as amended

4.(1) Paragraphs (k) and (l) of section 2 The Department of Public Works and Services Act, 1973 are repealed and the following substituted:

"(k) "supplies" means

(i) goods, chattels, materials and personal property of every kind, including supplies required to be manufactured, or on which or in relation to which any labour or skill is required to be expended before, upon or after delivery to the Government,

(ii) the provision of transportation of all kinds,

(iii) subject to Part III.I printing and other like reproduction, and

(iv) services as defined in The Public Tender Act, 1984."

(2) Sections 7, 47, 51 and 52 of the said Act are amended by striking out the word "services" wherever it occurs and substituting the word "supplies".

(3) This section comes into force on the commencement of The Public Tender Act, 1984.

RSN 1970
c.102
as amended

5.(1) Subsection (1) of section 6 of The Education (Teachers' Pensions) Act is amended by striking out the word and figure "subsection (2)" and by substituting the words "this section".

(2) Subsection (2) of section 6 of the said Act is repealed and the following substituted:

"(2) Paragraphs (k) and (o) of section 2 have no application for the purposes of this section.

(3) In this section

(a) "salary year" means a period in respect of which the teacher is credited with a year of pensionable service; and

(b) "year of pensionable service" means a sequence comprising ten successive one-tenth parts of a year of pensionable service that are calculated in accordance with the formula prescribed under subsection (4).

(4) The Lieutenant-Governor in Council may make regulations prescribing a formula for calculating days of pensionable service in one-tenth parts of a year of pensionable service, and in reckoning a sequence comprising the successive one-tenth parts, the intervention of a period of non-service or non-pensionable service in the sequence shall be disregarded.

(5) Not more than ten one-tenth parts of a year of pensionable service may be credited in a school year, and where fewer than ten one-tenth parts of a year of pensionable service are credited in a school year, subject to paragraph (b) of subsection (3) and to section 13, that fraction may be added to fractions credited in other school years for the purpose of computing a year of pensionable service.

(6) For the purpose of calculating the average yearly salary of a teacher during any five salary years the teacher may select the five salary years to be used for the calculation from the last seven salary years of that teacher."

(3) This section is deemed to have come into force on the fourteenth day of July, 1981, and regulations made under subsection (4) of section 6 of the said Act, as enacted by this section, may be made with retroactive effect to that date.

RSN 1970
No.152
as amended

6. Section 209 of The Highway Traffic Act is repealed and the following substituted:

Police
orders

"209(1) The Chief of Police may in respect of any part of the province in which the Royal Newfoundland Constabulary performs policing duties and the commanding officer of the Royal Canadian Mounted Police in the province may in respect of any part of the province in which the Royal Canadian Mounted Police performs policing duties make and publish in the Gazette and in an appropriate newspaper orders

- (a) as to the line to be kept by persons driving or riding a vehicle or animals on a highway;
- (b) as to the manner in which vehicles of any description may be drawn up while waiting on a highway;
- (c) as to the route to be observed by a vehicle, horses and persons; and
- (d) for preventing obstructions on a highway in a case where the highway is likely to be thronged or obstructed.

(2) The Chief of Police or the commanding officer of the Royal Canadian Mounted Police, as the case may be, may give directions to traffic officers for the purpose of regulating traffic in the neighbourhood of public offices, churches, theatres and other places of public resort.

(3) Every breach of an order made or directions given under

subsections (1) and (2) constitutes a separate offence."

1974 No.36
as amended

7. Paragraphs (a) and (b) of section 3 of The Income Tax Savings Plans Act are amended by striking out wherever they occur the words "the trustee or the investment corporation" and substituting the words "the trustee, the investment corporation or the depositary".

1980 c.41
as amended

8.(1) Subsection (1) of section 17 of The Jury Act is amended by striking out the words "may arrange" and by substituting the words "shall arrange".

(2) This section is deemed to have come into force on July 1, 1981.

1977 c.64
as amended

9. The Labour Relations Act, 1977 is amended by adding immediately after section 16 the following:

Reference or
application
to Board

"16.1(1) The Minister may refer to the Board for a determination any matter referred to in paragraph (k) of section 17.

(2) A trade union, council of trade unions, employer or employer's organization may apply to the Board for a determination of any matter referred to in paragraph (k) of section 17."

1985 c.28

10. Subsection (1) of section 12 of An Act to Amend The Liquor Corporation Act, 1973, chapter 28 of the Statutes of Newfoundland, 1985 is amended by striking out the words "Paragraph (a) of section 2" and by substituting the words "Paragraph (c) of section 2".

RSN 1970
c.326
as amended

11. Subsection (2) of section 43 of The Real Estate Trading Act is amended by striking out the words "an

agreed amount or percentage" and substituting the words "an agreed amount of percentage".

RSN 1970
c.346

12. Section 104 of The Schools Act is amended by adding immediately after subsection (3) the following:

"(4) Any regulation, rule or by-law made by a School Board under section 12 or 13 shall not for the purposes of The Statutes and Subordinate Legislation Act be considered as subordinate legislation."

1974 No.81
as amended

13. Subsection (3) of section 10 of The Solemnization of Marriage Act, 1974 is amended by striking out the words "and Family Court judge".

1979 c.88
as amended

14.(1) Subsection (1) of section 7 of The Unified Family Court Act is amended

(a) by repealing in paragraph (h) the word "(interspousal)"; and

(b) by repealing paragraph (o) and substituting the following:

"(o) charges or proceedings under section 745 of the

Criminal Code that are between spouses;"

(2) Subsection (7) of section 7 of the said Act is amended by striking out the words and figures "sections 245(1), 245(2)(b), 666 and 746" and substituting the words and figures "section 245(b), 666, 745 and 746".

(3) Subsection (1) of section 8 of the said Act is amended by striking out the words "in a place outside the judic-

ial area" and substituting the words "whether inside or outside the judicial area".

(4) Subsection (1) of section 14 of the said Act is repealed and the following substituted:

"(1) Subject to subsection (2), proceedings may be commenced in the Unified Family Court only where the applicant, the respondent or a child involved in the proceedings resides in the judicial area but a proceeding is not required to be commenced or taken in the judicial area by reason only that a respondent or a child involved in the proceeding, other than an applicant, resides in the judicial area."

(5) Paragraph (a) of section 15 of the said Act is amended by striking out the word "and" and substituting the word "or".

RSN 1970
c.400 as
amended

15.(1) Subsections (1), (1A) and (2) of section 19 of The Wild Life Act are amended by striking out the number "17A" and by substituting the number "17.1".

(2) This section is deemed to have come into force on December 3, 1982.



CHAPTER 34

AN ACT TO AMEND THE LEASEHOLDS IN
ST. JOHN'S ACT

(Assented to June 17, 1986)

Analysis

Section:	Section
1. S.2(5) Added Interpretation	6. S.13 Amdt. Notice to exercise rights
2. S.4.1(1) Amdt. Lease deemed renewed	7. S.13.1 Added Application to Registrar
3. S.5.1 Added Land not in use	8. S.14 R&S. Referral to arbitrator
4. S.9.1 Added Currency of lease	9. S.16 Amdt. Payment into Court
5. S.12(1) R&S. Registrar's powers	

Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

1977 c.94
as amended

1. Section 2 of The Leaseholds in St. John's Act is amended by adding immediately after subsection (4) the following:

"(5) Notwithstanding paragraph (a) of subsection (1), land on which a lessee erected a building before a lease with respect to the land was entered into shall be considered to be vacant land for the purposes of this Act."

2. Subsection (1) of section 4.1 of the said Act is amended by striking out the figures "1987" and substituting the figures "1992".

3. The said Act is further amended by adding immediately after section 5

the following:

Land not
in use

"5.1 Where, pursuant to this Act, a lessee exercises his or her right to purchase the freehold of land held by the lessee under an ancient lease and the building on that land is not being used for any purpose, the land and the building on the land shall be considered to be in use for the purpose for which they were used immediately before the use of the land and the building on that land ceased."

4. The said Act is further amended by adding immediately after section 9 the following:

Currency
of lease

"9.1(1) For the purposes of this Act a lease shall be considered to be current and a lessee shall be entitled to exercise his or her rights pursuant to this Act notwithstanding that

- (a) the rent due under the lease is in arrears;
- (b) taxes payable by the lessee under the lease are in arrears; or
- (c) the lessee has failed to maintain the property as required under the lease.

(2) Paragraph (c) of subsection (1) does not operate so as to make current a lease where the land has been rendered vacant by the removal of a building from the land."

5. Subsection (1) of section 12 of the said Act is repealed and the following substituted:

"12.(1) Where an appointment of an attorney has not been registered as required under section 11, the Registrar of the Supreme Court shall do all those things that are necessary to provide for the granting of all the right, title and interest of the lessor in and to the freehold upon payment into the Supreme Court of the amount calculated in accordance with this Act for the purchase of the freehold."

6.(1) Subsection (3) of section 13 of the said Act is amended by striking out the word "may" and substituting the word "shall".

(2) Subsection (4) of section 13 of the said Act is repealed and the following substituted:

"(4) A person who intends to contest the exercise of a right conferred on a lessee by this Act shall give a written notice of that intention to the lessee and shall state the grounds for contesting the exercise of a right by the lessee not later than thirty days from the date on which the lessee gave notice of his or her intention to exercise that right."

7. The said Act is further amended by adding immediately after section 13 the following:

Application
to Registrar

"13.1(1) Where a lessee gives notice to a lessor that he or she intends to exercise a right conferred on the lessee by this Act and

(a) no notice is given to a lessee pursuant to sub-

section (4) of section
13; or

- (b) a lessor refuses to convey the freehold upon tender to the lessor of the purchase price of the freehold calculated pursuant to this Act,

the lessee may make an application to the Registrar of the Supreme Court for a grant of the freehold of the land occupied by the lessee.

(2) An application made pursuant to subsection (1) shall be accompanied by a copy of the notice required to be given by section 13 and an affidavit sworn to by the lessee stating that

- (a) the lessee is entitled to purchase the freehold as provided for by this Act; and
- (b) the notice required to be given by section 13 has been given, and
 - (i) no reply has been received by the lessee, and
 - (ii) the lessor refuses to convey the freehold upon tender of the purchase price of the freehold calculated pursuant to this Act.

(3) The Registrar, on receipt of an application, a copy of the notice required to be given by section 13 and an affidavit requir-

ed by this section and upon payment into the Supreme Court of the amount calculated in accordance with this Act for the purchase of the freehold shall execute whatever instrument of conveyance is necessary to convey the freehold to the person entitled thereto.

(4) Where the arbitrator, in relation to a matter referred to him or her under subsection (1) of section 14 orders a lessor, on tender of the purchase price of a freehold calculated in accordance with this Act, to convey the freehold to the party entitled thereto and the lessor does not so convey within thirty days of that order, the party entitled to the freehold may apply to the Registrar of the Supreme Court and on payment into the Supreme Court of the purchase price of the freehold, the Registrar shall execute whatever instrument of conveyance is necessary to convey the freehold to the person entitled thereto."

8. Section 14 of the said Act is repealed and the following substituted:

Referral to
arbitrator

"14.(1) A person to whom a notice is sent pursuant to section 13 may apply to the arbitrator on the following grounds:

- (a) that the lease is not current because at the time the lessee gave notice of his or her intention to exercise the right conferred by this Act to purchase the freehold there was no building on the land; or

(b) that the land occupied by the lessee is being occupied for a commercial use.

(2) Where the parties to an ancient lease of land to which section 5 applies are unable to agree on a matter referred to in subsection (1) of that section, either party may apply to the arbitrator for a determination of the matter in dispute.

(3) The arbitrator shall make, in relation to a matter referred to him or her under subsection (1), whatever determination appears just in the circumstances, and in particular may order the issuance of a conveyance of the freehold of the land that was the subject of arbitration to the lessee entitled thereto.

(4) A person who applies to an arbitrator pursuant to subsection (1) shall post an amount as security for all the costs of a lessee of the land that is the subject of arbitration, to be determined by the arbitrator, including the cost of retaining a solicitor and the portion of the amount payable to the arbitrator by the lessee.

(5) The security for costs required to be posted by subsection (4) shall be paid to the arbitrator who shall retain them pending the outcome of the arbitration.

(6) An arbitrator shall not hear a matter referred to him or

her pursuant to subsection (1) until the security for costs required to be posted by subsection (4) has been posted with the arbitrator.

(7) Where the determination of a matter referred to the arbitrator pursuant to subsection (1) is in favour of the lessee the arbitrator shall award the amount posted as security for costs to the lessee.

(8) Notwithstanding subsection (1), where a notice is given to the Registrar of the Supreme Court the Registrar shall not make an application to an arbitrator for a determination of a matter."

9.(1) Subsection (1) of section 16 of the said Act is repealed and the following substituted:

"16.(1) Where an amount of money is tendered by a lessee in payment for a conveyance of a freehold under this Act and the lessor

- (a) is not known;
- (b) is known but cannot be found and no appointment of an attorney has been registered; or
- (c) is known and resides within the province and refuses to convey on tender of the amount,

the money shall be paid into the Supreme Court."

(2) Subsection (2) of section 16 of the said Act is amended by striking out the word "section" and substituting the word "Act".



CHAPTER 35

AN ACT TO AMEND THE LABOUR
STANDARDS ACT

(Assented to June 17, 1986)

Analysis

Section:

1. S.37 Amdt.
Priority of claims
2. S.37.1 Added
Tips or gratuities
3. S.42(2)&(3) R&S.
Benefits during
maternity leave

Section:

4. S.42.1 Added
Adoption leave
5. S.58(d)&(e) R&S.
Powers of Director
6. S.64(1)(b) R&S.
Powers of Tribunal
7. S.65(4) R&S.
Order of Tribunal

Be it enacted by the Lieutenant-Governor and House of
Assembly in Legislative Session convened, as follows:

1977 c.52
as amended

1.(1) Subsection (2) of section 37
of The Labour Standards Act is amended
by adding immediately after the words
"and upon receiving payment of all
unpaid wages from the employer, the
person" the words "or, where the person
is represented by another person, that
person".

(2) Section 37 of the said Act is
further amended by adding immediately
after subsection (2) the following:

"(3) A notice referred to in
subsection (2) may be given by one
person on behalf of another person
where the person on whose behalf
the notice is given has authorized
it to be given."

2. The said Act is further amended
by adding immediately after section 37
the following:

"PART V.1

Tips or Gratuities

Tips or
gratuities

37.1(1) Tips or gratuities are the property of the employee to whom or for whom they are given and shall not be withheld by the employer, notwithstanding any consent given by the employee.

(2) Where a surcharge or other charge is paid in lieu of a tip or gratuity, the amount paid shall be deemed to be a tip or gratuity for the purpose of subsection (1)."

3. Subsections (2) and (3) of section 42 of the said Act are repealed and the following substituted:

"(2) An employer shall not dismiss an employee or give notice of dismissal to an employee

(a) for the reason only that the employee informs the employer that she is pregnant and requests maternity leave; or

(b) because of absence by reason of maternity leave permitted by this Part.

(3) Where an employee is dismissed by her employer contrary to subsection (2), the onus of proving that the reason for dismissal is unrelated to the pregnancy of the employee rests with the employer."

4. The said Act is further amended by adding immediately after section 42 the following:

"PART VI.1

Adoption Leave

Adoption
leave

42.1(1) An employer shall grant adoption leave without pay in accordance with subsection (2) to every person who

- (a) has been in the employment of the employer for a continuous period of at least twelve months immediately preceding the date of the placement of the child with the employee;
- (b) submits to the employer a written application for leave at least four weeks prior to the date on which the child is placed in the home or otherwise placed in the care and custody of the employee; and
- (c) submits a letter signed by the Director of Child Welfare confirming the proposed placement of a child with the employee.

(2) Adoption leave consists of a period of seventeen weeks commencing not earlier than one week before the date on which the child is placed in the home or otherwise placed in the care and custody of the employee.

(3) Notwithstanding subsection (2), an employer and employee may agree in writing to increase or reduce the period referred to in subsection (2).

(4) Where an employee is unable to comply with paragraph (b) of subsection (1), the employee shall give notice to his or her employer equivalent to the notice given to the adoptive parent by the Department of Social Services.

(5) Sections 41 and 42 apply, with the necessary changes, to adoption leave under this section."

5. Paragraphs (d) and (e) of section 58 of the said Act are repealed and the following substituted:

"(d) accept from employers unpaid wages, tips or gratuities or surcharges paid in lieu of tips or gratuities due and payable to employees and remit them to the employees;

(e) if unpaid wages, tips or gratuities or surcharges paid in lieu of tips or gratuities are not received by the Director under paragraph (d), demand evidence that the wages, tips or gratuities or surcharges in lieu of tips or gratuities have been paid to each employee in accordance with a determination made and intimated; and".

6. Paragraph (b) of subsection (1) of section 64 of the said Act is repealed and the following substituted:

"(b) make orders upon employers and employees, or any of them, respecting any matter referred to it

under paragraph (a), including orders as to the payment of wages, tips or gratuities or surcharges in lieu of tips or gratuities payable to employees and orders requiring compliance with any obligation imposed upon employers and employees, or either of them, under or by virtue of this Act."

7. Subsection (4) of section 65 of the said Act is repealed and the following substituted:

"(4) Where an application for review under subsection (3) relates to the payment by the applicant of wages, tips or gratuities or surcharges in lieu of tips or gratuities due to an employee under this Act, the applicant shall deposit with the tribunal at the same time as the application is made

- (a) the amount that is determined by the Director to be payable by the applicant, which shall be held in trust by the Tribunal; or
- (b) a bond or security in a form and in an amount satisfactory to the Chairman of the Tribunal,

and if the Tribunal decides that the wages, tips or gratuities or surcharges in lieu of tips or gratuities are payable to the employee, the sum, bond or security so deposited shall, after the expiry of the period provided for in section 67 for appeal, be

applied by the Tribunal towards the satisfaction of any order made by the Tribunal."



CHAPTER 36

AN ACT TO REVISE THE LAW RESPECTING
INSURANCE ADJUSTERS, AGENTS AND BROKERS

(Assented to June 17, 1986)

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- 50. RSN 1970 c.176 Amdt.
- 51. RSN 1970 cs. 175 & 204 Rep.
- 52. Commencement

Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

Short title 1. This Act may be cited as The Insurance Adjusters, Agents and Brokers Act.

Definitions

2. In this Act

(a) "accident insurance" means insurance by which the insurer undertakes, otherwise than incidentally to some other class of insurance defined by or under this Act or any other Act to pay insurance money in the event of accident to the person or persons insured, but does not include insurance by which the insurer undertakes to pay insurance money both in the event of death by accident and in the event of death from any other cause;

(b) "accidental death insurance" means insurance undertaken by an insurer as part of a contract of life insurance whereby the insurer undertakes to pay an additional amount of insurance money in the event of the death by accident of the person whose life is insured;

- (c) "adjuster" means a natural person who,
- (i) for compensation or otherwise, directly or indirectly solicits the right to investigate a loss, assess damages, negotiate the settlement of a resultant claim for an insurer, self-insurer, claimant or insured under a contract of insurance or guarantee insurance or assumed liability in lieu of such contracts,
 - (ii) for compensation or otherwise, holds himself or herself out to a claimant or an insured as an adjuster, investigator, consultant, or adviser with respect to the settlement of losses or claims referred to in subparagraph (i),
 - (iii) for compensation or otherwise, in direct contact with a claimant or an insured, holds himself or herself out as an adjuster, assessor, investigator, consultant or adviser with respect to the settlement of losses or claims referred to in subparagraph (i), or
 - (iv) for compensation or otherwise, in direct contact with a claimant or an insured, investigates a loss, assesses damage, negotiates the

settlement for losses or
claims referred to in
subparagraph (i)

but does not include a person
referred to in section 3.

- (d) "adjustment company" means a body corporate or partnership licensed to carry on the business of an adjuster under this Act, but does not include an insurer;
- (e) "Advisory Board" means the board appointed to assist and advise the Superintendent pursuant to section 20;
- (f) "agent" means a body corporate or partnership
 - (i) which, for compensation, solicits insurance on behalf of any one 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 assumes to act in the negotiation of insurance or in negotiating its continuance or renewal, or
 - (ii) which holds itself out as an insurance consultant or examines, appraises, reviews or evaluates any insurance policy, plan or program or makes recommendations or gives advice with regard to any of the above;

- (g) "Appeal Board" means the board appointed to hear appeals of decisions of the Superintendent regarding licences pursuant to section 18;
- (h) "broker" means a body corporate or partnership, other than an agent, which for compensation, with respect to persons or property in the province, deals directly with the public and
 - (i) acts or aids in any manner in soliciting, negotiating or procuring the making of any contract of insurance whether or not it has arrangements with insurers allowing it to bind coverage and countersign insurance documents on behalf of insurers,
 - (ii) provides risk management services including claims assistance where required to a body corporate other than itself, or
 - (iii) holds itself out as an insurance consultant or examines, appraises, reviews or evaluates any insurance policy, plan or program or makes recommendations or gives advice with regard to any of the above;
- (i) "claimant" means a person other than an insured to whom monies may be payable under a contract;

- (j) "compensation" includes a promise of or intention to or hope of or expectation of obtaining a commission, fee, bonus, salary or any direct benefit;
- (k) "contract" means a contract of insurance and includes a policy, certificate, interim receipt, renewal receipt or writing evidencing the contract, whether sealed or not, and a binding oral agreement;
- (l) "credit insurance" means insurance against loss to the insured through the insolvency or default of a person to whom credit is given in respect of goods, wares or merchandise;
- (m) "disability insurance" means insurance undertaken by an insurer as part of a contract of life insurance whereby the terms of the policy provide for the duration of the insurance for more than one year and for the payment of such insurance money or the granting of benefits in the event that the insured becomes disabled as a result of bodily injury or disease;
- (n) "guarantee insurance" means the undertaking to perform an agreement or contract or to discharge a trust, duty or obligation upon default of the person liable for such performance or discharge or to pay money upon that default or in lieu of that performance or discharge or where there is loss or damage through that

default, but does not include credit insurance;

- (o) "insurance" means the undertaking by one person to indemnify another person against loss or liability for loss in respect of a certain risk or peril to which the object of the insurance may be exposed, or to pay a sum of money or other thing of value upon the happening of a certain event, and includes life insurance;
- (p) "insured" means a person insured by a contract whether named or not;
- (q) "insurer" means a person who undertakes or agrees or offers to undertake a contract;
- (r) "licence" means an adjuster's licence, adjustment company's licence, agent's licence, broker's licence, representative's licence, student's licence or any class of licence as may be prescribed, as the case may be, which has been issued or renewed under this Act or the regulations and which has not expired or been suspended or revoked by the Superintendent;
- (s) "licensee" means a person to whom a licence has been issued pursuant to this Act and the regulations;
- (t) "life insurance" means an undertaking by an insurer to pay insurance money

- (i) on death,
 - (ii) on the happening of an event or contingency dependent on human life,
 - (iii) at a fixed or determinable future time, or
 - (iv) for a term dependent on human life,
- and without restricting the generality of the foregoing, includes,
- (v) accidental death insurance but not accident insurance,
 - (vi) disability insurance, and
 - (vii) an undertaking entered into by an insurer to provide an annuity or what would be an annuity except that the periodic payments may be unequal in amount and such an undertaking shall be deemed always to have been life insurance;
- (u) "life insurer" means any body corporate licensed to transact the business of life insurance or annuities under The Insurance Companies Act;
 - (v) "non-resident" means
 - (i) an individual not ordinarily resident in the province, or

- (ii) a partnership or body corporate whose principal place of business is located outside the province and does not maintain an office in the province;
- (w) "policy" means the instrument evidencing a contract;
- (x) "prescribed" means prescribed by the regulations;
- (y) "representative" means
 - (i) a person who under authority conferred by an insurer, agent or broker, for compensation or commission or other thing of value solicits insurance on behalf of the person conferring such authority, or transmits, for a person other than that person, an application for or policy of insurance, to or from an insurer or the person conferring such authority, or offers or assumes to act on behalf of the person conferring such authority, in the negotiation of a policy of insurance or in negotiation of its continuance or renewal, or
 - (ii) a person who holds out as an insurance consultant or examines, appraises, reviews or evaluates any insurance policy, plan or program or makes recommendations or gives

advice with regard to
any of the above;

- (z) "self insurer" means an individual, partnership or body corporate which retains all or part of a risk for its own account whether or not an excess of loss cover exists to protect itself in the event of a catastrophe;
- (aa) "sponsor" means a person who
- (i) recommends that an applicant is suitable for a licence under this Act,
 - (ii) acknowledges directly or indirectly that an agent-principal or employer-employee relationship exists between that person and an applicant, or
 - (iii) recommends an applicant and acknowledges that a relationship exists pursuant to subparagraph (ii);
- (bb) "student" means a natural person who is studying to become qualified as an adjuster or representative;
- (cc) "Superintendent" means the Superintendent of Insurance appointed pursuant to The Department of Consumer Affairs and Communications Act; and
- (dd) "surety bond" means a guarantee of the performance of an expressed obligation.

Non-Applica-
tion of Act

3. The provisions of this Act relating to adjusters and adjustment companies do not apply to

- (a) a barrister or solicitor who is practising in the province and who is acting in the usual course of his or her profession;
- (b) a liquidator or trustee in bankruptcy, in the performance of his or her duties;
- (c) a testamentary executor, director, trustee or fiduciary, in the performance of his or her duties;
- (d) a person who is employed as an appraiser, engineer or other expert who is employed solely for the purpose of giving expert advice or evidence;
- (e) members of a police force, fire department or fire commissioner's office in the performance of their duties; and
- (f) those classes of insurance, persons or claims exempted by the regulations.

Licensing

Licence

4.(1) Subject to section 5, the Superintendent may, where a person pays the prescribed fee, issue or renew a licence to that person.

(2) A person applying for a licence or renewal of a licence shall file with the Superintendent a written application in the prescribed form.

Qualifica-
tions &
requirements

5.(1) A person applying for a licence and a licensee are subject to the qualifications and requirements for licensing set out in this Act and the regulations.

(2) Where the Superintendent is not satisfied or it appears to the Superintendent that the person applying for a licence or the licensee is not a suitable person to exercise the rights and privileges of a holder of a licence, the Superintendent may refuse to issue a licence to or may revoke the licence of that person.

(3) Every natural person who on the date of the coming into force of this Act was carrying on business and had been carrying on business for a number of years as may be prescribed and does not meet the educational requirements set forth in the regulations may apply to the Superintendent and has the right to obtain from the Superintendent a licence under this Act if the application is accompanied by the prescribed fee and the other requirements of the regulations.

Conditions,
etc. of
licence

6. The Superintendent may attach to a licence such restrictions, limitations or conditions, if any, the Superintendent deems fit.

Transferring
services

7.(1) An adjuster or representative who transfers his or her services from one sponsor to another shall immediately notify the Superintendent, who, if the Superintendent is satisfied with the transfer, may endorse on the licence held by the adjuster or representative a memorandum of the transfer of services including the name of the sponsor to whom or to which the services are transferred.

(2) Where an adjuster or representative

- (a) ceases to be employed by the sponsor whose name is specified in his or her licence; or
- (b) transfers his or her services to another sponsor and the Superintendent is not satisfied with the transfer,

the licence of the adjuster or representative is deemed to be suspended for the purposes of this Act.

(3) The sponsor, adjuster or representative shall forthwith return the licence referred to in this section to the Superintendent, who may, if the licence has not expired, issue it again to the adjuster or representative when the adjuster or representative becomes employed with another sponsor to the satisfaction of the Superintendent.

Students

8.(1) An adjuster, adjustment company, representative, insurer, agent or broker shall not employ as a student adjuster or student representative, as the case may be, a person who does not hold a prescribed licence.

(2) A student may be employed by only one adjuster, adjustment company, representative, insurer, agent or broker, as the case may be,

- (a) who shall sponsor the student's application for a licence; and
- (b) whose name shall be specified on the student's licence.

(3) A student who transfers his or her services from one sponsor to another shall immediately notify the Superintendent who, if the Superintendent is satisfied with the transfer may endorse on the licence held by the student a memorandum of the change of sponsorship including the name of the sponsor to whom the services and sponsorship are transferred.

(4) Where a student

(a) ceases to be employed by the sponsor whose name is specified on his or her licence;
or

(b) transfers his or her services from one sponsor to another and the Superintendent is not satisfied with the transfer,

the licence of the student is deemed to be suspended for the purposes of this Act.

(5) The sponsor or student shall forthwith return the student's licence referred to in this section to the Superintendent, who may, if the licence has not expired, issue it again to the student when the student becomes employed with another sponsor to the satisfaction of the Superintendent.

(6) The Superintendent shall refuse to issue a student's licence to a person who is a non-resident.

Corporate
licences

9.(1) A partnership or body corporate may, in accordance with this Act, apply for an adjustment company licence, an agent's licence or a broker's licence.

(2) All officers, partners or employees who act under an adjustment company's licence, an agent's licence or a broker's licence shall be individually licensed.

(3) An adjustment company licence, an agent's licence or a broker's licence may be issued to any body corporate that is incorporated expressly for the purpose of acting as an adjustment company, agent or broker or for that and such other purposes as the Superintendent expressly approves of and where the body corporate has been incorporated under The Corporations Act, the articles of incorporation shall have been approved by the Superintendent prior to incorporation.

Company or
partnership
dissolved

10.(1) Where a partnership licensed as an adjustment company, agent or broker is dissolved or otherwise terminated before a licence issued under this Act expires, the partnership shall immediately notify in writing the Superintendent who shall revoke the licence.

(2) Where a body corporate, which has been licensed under this Act, is dissolved or wound up or its charter is cancelled or it ceases doing business in the province before a licence issued under this Act expires, the body corporate by its principal officers, the liquidator or trustee shall notify in writing the Superintendent who shall revoke the licence.

Non-residents

11.(1) The Superintendent shall not issue a licence to a non-resident adjuster or non-resident representative unless that adjuster or representative agrees, as a condition of the licence, to act through the facilities of an adjuster, adjustment company, representative, agent or broker licensed under

this Act or an insurer who sponsors the licence of an adjuster, as the case may be.

(2) The Superintendent shall not issue a licence to a non-resident adjustment company, agent or broker unless that company, agent or broker agrees as a condition of the licence to act through the facilities of an adjustment company, agent or broker licensed under this Act or an insurer who sponsors the licence of an adjuster, as the case may be.

Expiry date

12. Every licence issued under this Act expires on a prescribed date in the year in which it was issued unless it is sooner revoked or suspended.

Prohibition
re licences

13.(1) The Superintendent shall not issue an adjuster's licence to a licensed representative or student representative or to a licensed real estate agent or real estate broker or their employees.

(2) The Superintendent shall not issue a representative's, agent's or broker's licence to a licensed adjuster or adjustment company or their employees or to a licensed real estate agent or real estate broker or their employees.

Confusion
of names

14.(1) The Superintendent shall refuse to issue a licence to an adjuster, adjustment company, an agent or broker in a name that is likely to be confused with that of another adjuster, adjustment company, agent or broker, as the case may be.

(2) An adjuster, adjustment company, representative, agent or broker shall not in any way identify himself, herself or itself by a name other than that specified by the licence issued to him, her or it.

Power to
revoke, etc.
a licence

15. The Superintendent may revoke, suspend or refuse to renew any licence issued under this Act, if, after due investigation, the Superintendent determines that a licensee has contravened any provision of this Act or the regulations.

One year
waiting
period

16. The Superintendent shall not issue a licence to an individual, partnership or body corporate whose licence has been revoked until at least one year after the date of revocation and unless that individual, partnership or body corporate complies with the qualifications for licensing under this Act and the regulations.

Notification
of suspension,
etc.

17.(1) Where the Superintendent refuses to issue a licence or suspends or revokes a licence, the Superintendent shall in writing notify the applicant whose application the Superintendent has refused or the licensee whose licence the Superintendent has suspended or revoked, as the case may be, and state the reason for the refusal, suspension or revocation.

(2) Notification of refusal, suspension or revocation under subsection (1) shall be delivered by registered mail and such action shall take effect fifteen days after notice is received at the post office to which it is addressed.

(3) Where the Superintendent refuses to issue a licence or where the

Superintendent suspends, revokes or amends a licence the Superintendent shall, when requested in writing delivered by registered mail by the applicant or the licensee within thirty days after the refusal, suspension, revocation or amendment, as the case may be, refer the matter to the Appeal Board within fifteen days of receiving the request.

Appeal Board

Appeal Board

18.(1) The Appeal Board consists of three persons appointed by the Lieutenant-Governor in Council for such term of office as the Lieutenant-Governor in Council deems fit.

(2) The members of the Appeal Board shall for the purpose of their duties have the powers of a commissioner appointed under The Public Enquiries Act.

(3) The Appeal Board shall, without delay, investigate matters referred to it and shall hear the person applying for a licence or the licensee, if the person requests, either in person or by counsel, and shall in writing report to the Superintendent whether in its opinion the licence should be issued, refused, suspended, revoked, amended or reinstated, stating reasons and making recommendations it thinks advisable.

(4) Notice of the decision under subsection (3) shall be delivered by registered mail to the person applying for a licence or the licensee and shall take effect within fifteen days after receipt at the post office to which it is addressed.

(5) Each member of the Appeal Board shall be paid any actual and reasonable expenses which the member incurs

in the performance of his or her duties as a member of the Appeal Board and each member other than a civil servant may be paid for his or her service, such remuneration, if any, as the Lieutenant-Governor in Council may fix.

(6) In referring the matter to the Appeal Board, the Superintendent shall state the reasons or grounds on which the Superintendent acted, and shall place before the Appeal Board in the form of a report or otherwise any information, evidence or documents obtained by the Superintendent or given or furnished to the Superintendent under this Act and the regulations.

(7) In the case of a referral of a decision of the Superintendent refusing, suspending, revoking or amending a licence or application for a licence to the Appeal Board, such decision shall not take effect until the disposition by the Appeal Board.

(8) The Superintendent is bound by the opinion reported and shall give effect to the opinion and recommendations received by the Superintendent from the Appeal Board.

(9) Any person who deems himself or herself aggrieved by the decision of the Appeal Board may within two weeks after the date of notification given under subsection (3) appeal to the Trial Division which may confirm the action of the Superintendent or cause a licence to be issued, restored or amended, as the case may be.

(10) In the case of a referral of a decision of the Appeal Board to the Trial Division, that decision shall not take effect until the disposition by the Courts.

Records

Record of
licences

19.(1) The Superintendent shall keep in the office of the Superintendent a record of licences that the Superintendent issues or renews.

(2) The record referred to in subsection (1) shall at all reasonable times be open for inspection on payment of the prescribed fee.

(3) A copy of the record referred to in this section may be provided by the Superintendent upon the payment of the prescribed fee for furnishing the copy.

(4) The Superintendent may publish from time to time a list of persons to whom licences have been issued or whose licences have been renewed, cancelled, suspended or revoked.

Advisory Board

Advisory
Board

20.(1) The Superintendent may appoint an Advisory Board consisting of not more than seven persons.

(2) The Advisory Board shall meet when the Superintendent deems necessary and make such reports and recommendations as it deems fit.

(3) The Superintendent is not bound by and may disregard any report, recommendation or advice of the Advisory Board and nothing in this section limits, abridges, impairs or derogates from the powers and duties conferred or imposed upon the Superintendent by this or any other Act.

(4) The Superintendent or the person who represents the Superintendent is the chairman of the Advisory Board.

Adjusters

Over-insur-
ance

21. An adjuster who in adjusting a loss of or damage to property by fire, finds that there is over-insurance upon the property or finds that there are circumstances which indicate that there is over-insurance upon the property, shall report his or her findings in writing to the Fire Commissioner appointed under The Fire Prevention Act and to the Superintendent, together with information on any circumstances which indicate that an offence may have been committed against the laws of the province or those of Canada.

Where name
of insurer
disclosed

22. Where an adjuster on behalf of an insurer, enters into negotiations with a person having a claim against an insured for which indemnity is provided by the insurer, the adjuster shall, if requested, disclose to the claimant the name and address of the insurer.

Confidential-
ity

23.(1) Unless required to do so by law, an adjuster and the employees of an adjustment company shall not disclose to any person other than their employer or principal, without the authorization of the employer or principal, any information obtained in the course of their duties.

(2) Nothing in subsection (1) shall prevent the Superintendent or the Superintendent's representative from having access to such books, files or other records as are necessary to investigate criminal or non-criminal complaints against

(a) the adjuster,

(b) the principal or employer of the adjuster,

- (c) the adjustment company, or
- (d) the principal or employer of the adjustment company.

Agents, Brokers and
Representatives

Special
licence

24.(1) The Superintendent may, on the payment of the prescribed fee issue a special licence to any suitable body corporate or partnership to act as a special insurance broker to negotiate, continue or renew contracts of insurance in the province with insurers not authorized to transact that business in the province.

(2) An applicant for a special licence under this section shall file with the Superintendent a written application on the prescribed form.

(3) If the Superintendent is satisfied with the statements and information provided, the Superintendent may issue a special licence, subject to suspension or revocation at the discretion of the Superintendent.

(4) A special licence may, at the discretion of the Superintendent, be renewed for each succeeding year on payment of the prescribed fee.

(5) Every body corporate or partnership shall, before receiving a special licence, execute and deliver to the Superintendent security to the satisfaction of the Superintendent in the prescribed sum that that body corporate or partnership will faithfully comply with all the requirements of this Act and the regulations.

(6) Every body corporate or partnership licensed under this section

shall pay to the Department of Finance the taxes that would be payable if the premiums had been received by a licensed insurer.

(7) Where it is shown to the satisfaction of the Superintendent that all insurance effected under this section is no longer in force or has been reinsured, the body corporate or partnership that is licensed is entitled to a release or cancellation of the security.

(8) The Superintendent shall refuse to issue a special licence under this section to a non-resident body corporate or partnership.

(9) Every body corporate or partnership which contravenes this section forfeits the special licence issued to that body corporate or partnership and is guilty of an offence.

Unlicensed
insurers

25.(1) An agent, broker or representative is liable to the insured on all contracts of insurance unlawfully made by or through the agent, broker or representative directly or indirectly with any insurer not licensed to undertake insurance in the province in the same manner as if such agent, broker or representative were the insurer.

(2) No body corporate or partnership shall place a contract with an unlicensed insurer unless that body corporate or partnership has obtained a licence pursuant to section 24 and complies with subsection (4).

(3) Where sufficient insurance in respect of any matter or thing in the province cannot be obtained from insurers licensed in the province, a body corporate or partnership licensed

pursuant to section 24 may effect insurance with any unlicensed insurer if that body corporate or partnership complies with subsection (4).

(4) Where sufficient insurance cannot be obtained from an insurer licensed in the province, the agent, broker or representative shall obtain from the insured an executed and dated declaration including:

- (a) a full description of the nature of the insurance;
- (b) the amount of insurance required;
- (c) a statement that the insurance cannot be obtained from licensed insurers; and
- (d) a statement that application for the insurance was previously made to and refused by named insurers licensed in the province.

Insurers
responsible

26.(1) A sponsor who sponsors the application for a licence of an agent, broker or representative accepts responsibility for actions of the agent, broker or representative relating to all applications for insurance submitted to the insurer and all contracts of insurance issued as a result of those applications.

(2) An insurer by its acceptance of an application for insurance from an agent, broker or representative whose application for licence was sponsored by another insurer accepts responsibility for the actions of the agent, broker or representative relating to the application submitted on any policy which may

be issued as a result of that application.

(3) Nothing in this section shall prejudice the agent-principal relationship between an insured and a broker, agent or representative.

Life insurance agents, brokers and representatives

27.(1) No licensed agent, broker or representative holding a licence to write life insurance shall

(a) act as an agent, broker or representative for more than one life insurer; or

(b) hold out to the public by advertisement or otherwise that the licensee is the agent, broker or representative of more than one life insurer.

(2) If a licensee holding a licence to write life insurance is unable to negotiate life insurance on behalf of an applicant with the insurer which sponsors the licensee, the licensee may obtain the life insurance from another insurer if that other insurer obtains, in each case, the consent in writing of the insurer which sponsors the licensee and files a copy of that consent with the Superintendent.

(3) Subsections (1) and (2) do not apply to an agent, broker or representative who has held a licence to write life insurance for at least three consecutive years.

(4) Subsection (2) does not apply to an agent, broker or representative who represents an insurer that is, in the opinion of the Superintendent, affiliated or associated with or is a member of a group of companies sharing

common ownership with the insurer that sponsors the agent's, broker's or representative's application for a licence.

(5) The insurer referred to in subsection (4) shall be specified in the licence of the agent, broker or representative, in addition to the insurer who sponsors the agent's, broker's or representative's application for licence, in a manner as determined by the Superintendent.

Prohibition

28.(1) An insurer or any of its officers, agents, brokers, representatives or employees shall not pay or allow compensation or anything of value for an application of insurance to any of the following:

- (a) any person who without a licence and in respect of insurance in the province acts as an agent, broker or representative or may influence the insured or prospect for insurance;
- (b) any representative for life insurance on himself or herself or any member of his or her immediate family unless the agent, broker or representative has within one year negotiated and fully paid the first premium to the insurer for at least three other contracts of life insurance;
- (c) any agent, broker or representative for insurance contracts on property or risk in which

- (i) the licensee,
- (ii) any member of the licensee's immediate family, or
- (iii) any body corporate of which the licensee is an officer, director or employee

is the owner or has the financial interest in, unless the licensee has within one year negotiated and paid premiums on additional contracts, other than life insurance, involving at least an equal premium value.

(2) The Superintendent may refuse to renew the licence of an agent or broker which or a representative who has failed to negotiate within one year the additional contracts required by paragraphs (b) and (c) of subsection (1).

(3) Subsection (1) shall not affect the payment or allowance by an agent, broker or representative of part of his or her commission to agents or brokers outside the province.

Payments of
premium

29. Payments in whole or in part to an agent, broker or representative of the amount of a premium or assessment due in respect of a contract issued by an insurer shall be deemed to be a payment to the insurer notwithstanding any condition or stipulation to the contrary.

Trust funds

30.(1) All funds received or receivable by an agent, broker or representative in the course of the business of that agent, broker or representative

- (a) on behalf of an insurer from members of the public, less the commission and any other deductions authorized by the insurer in writing; and
- (b) on behalf of members of the public from an insurer,

are deemed to be trust funds.

(2) No agent, broker or representative shall assign, pledge, hypothecate, mortgage or in any other way charge the funds referred to in subsection (1) whether or not such funds have been received or remain receivable.

(3) Any assignment, pledge, hypothecation, mortgage or other charge of or on funds referred to in subsection (1) is void against the beneficial owner of the funds.

(4) Subsections (1), (2) and (3) do not apply to negotiable instruments payable directly to an insurer.

Trust funds
paid to
insurer

31.(1) After the expiry of such period of time stipulated in an agreement between the agent, broker or representative and an insurer for payment of funds to the insurer, the funds held in trust for an insurer by an agent, broker or representative shall be paid over to the insurer within fifteen days after written demand made therefor, less commission and any deductions to which, by written consent of the insurer, the agent, broker or representative is entitled.

(2) After funds have been received by an agent, broker or representative from the insurer, the funds held in trust for an insured by an agent, broker or representative shall be paid over to

the insured within fifteen days after written demand therefor, plus any unearned commission or other refund to which the insured is entitled.

Lien on
policy

32. Unless otherwise agreed, the broker, agent or representative has as against the insured, a lien upon the policy for the amount of the premium and the licensee's charges in respect of the policy.

Statement of
financial
affairs

33.(1) Every individual, partnership or body corporate licensed as a representative, agent or broker shall present annually to the Superintendent not later than three months after the fiscal year end of the representative, agent or broker, a statement of the financial affairs of the insurance business of the licensee in a form prescribed by the Superintendent for the period then ended.

(2) This section does not apply to a representative who is an employee of an insurer, broker or agent.

Insurers
annual
return

34. All insurers shall make an annual return to the Superintendent in a prescribed form identifying

(a) all persons duly authorized as agents, brokers or representatives of that insurer in the province; and

(b) all persons to whom the insurer paid compensation in respect of the placement of or negotiation of contracts of insurance or renewals thereof, or for attempting to do so.

Records
audited

35. The Superintendent or the person who represents the Superintendent shall have the authority at all reason-

able times to examine or audit the records of an agent, broker or representative to the extent necessary to determine the affairs of the agent, broker or representative.

General

Re holding
out

36.(1) No person shall hold out as an adjuster or representative or act as such unless that person holds a valid, subsisting licence under this Act authorizing that person to act in the capacity of an adjuster or representative.

(2) No body corporate or partnership shall hold itself out as an adjustment company, agent or broker or act as such unless it holds a valid subsisting licence under this Act authorizing it to act in the capacity of an adjustment company, agent or broker.

Collectors
of life and
accident
insurance
premiums

37.(1) Subject to subsection (2), a collector of life insurance and accident insurance premiums who does not solicit applications for or the renewal or continuance of insurance contracts or act or aid in negotiating such contracts or the renewal thereof, may carry on such business without a licence.

(2) This section does not apply where the collection fee exceeds five per cent of any amount collected.

Fraternal
societies,

38.(1) Subject to subsection (2), a member of a fraternal society or mutual benefit society, other than one who devotes or intends to devote more than fifty per cent of his or her time to the solicitation and procurement of insurance contracts for such society and who receives or intends to receive any commission or other compensation directly dependent on the amount of insurance solicited and procured by him or her,

may, without a licence, solicit persons to become members of such society.

(2) Where any person who in the preceding calendar year has solicited and procured insurance contracts on behalf of any fraternal society or mutual benefit society in an amount of insurance in excess of a prescribed amount that person is presumed to be devoting or intending to devote more than fifty per cent of his or her time to the solicitation or procurement of insurance contracts for such society.

(3) In this section

(a) "fraternal society" means fraternal society as defined by paragraph (r) of section 2 of The Insurance Companies Act; and

(b) "mutual benefit society" means mutual benefit society as defined by paragraph (ff) of section 2 of The Insurance Companies Act.

Payment of
bonus, etc.
to insurer's
employees

39. Nothing in this Act shall affect any payment by way of dividend, bonus, profit or savings which is provided for by a contract of insurance or be construed so as to prevent an insurer compensating a bona fide salaried employee of the head or any branch office of the insurer in the province in respect of insurance issued by the employing insurer upon the life of such employee or so as to require that such employee shall be licensed as an agent, broker or representative to effect such insurance.

Privileged
information

40. Any information, document, record, statement or other thing made or disclosed to the Superintendent concern-

ing any person licensed or applying for a licence under this Act shall be absolutely privileged and shall not be used as evidence in any action or proceedings in any court brought by or on behalf of such person.

Incapacity

41.(1) In the event of the incapacity of a licensee to discharge the duties of an adjuster, an adjustment company, agent, broker or representative, as the case may be, the Superintendent may, if the Superintendent deems fit in any particular case, appoint another licensee holding the same class of licence or an adjuster, adjustment company, agent, broker or representative holding a licence equivalent to that of the incapacitated licensee issued by another Canadian jurisdiction to administer the affairs of the incapacitated licensee.

(2) The Superintendent shall review the appointment of the licensee to administer the affairs of an incapacitated licensee every three months, or at such more frequent intervals as the Superintendent deems fit.

(3) In this section the word "incapacity" includes, without limiting the generality of the word, the inability of a licensee to act due to sickness or illness, or due to the suspension, revocation or cancellation of the licence.

Superintendent's inquiries

42. Every licensee shall make prompt and explicit reply to an inquiry directed to that licensee by the Superintendent in relation to any transaction of the licensee relating to insurance activity.

Investigations

43.(1) The Superintendent or any person authorized by the Superintendent

may, so long as it is reasonably necessary to determine compliance with this Act or the regulations, enter upon any place and demand the production of and inspect all or any of the business books, documents, correspondence and records that the Superintendent or authorized person believes on reasonable grounds are in respect of the person about whom the investigation is being made.

(2) Where the Superintendent believes on reasonable grounds that a person has contravened a provision of this Act or regulations or where the Superintendent believes on reasonable grounds that a person has engaged in, is engaging in or is about to engage in an unfair trade practice or unconscionable act or practice relating to insurance, the Superintendent or person authorized by the Superintendent may with a warrant issued under subsection (3) at any reasonable time enter a place and may investigate, inquire into and examine the affairs in relation to the trade practice, act or practice relating to insurance in respect of which the investigation is being made and into any books, documents, correspondence and records in relation to it.

(3) Any Provincial Court judge or justice of the peace who is satisfied by information upon oath that there are reasonable and probable grounds for believing that there is in any place anything that there are reasonable grounds to believe will afford evidence with respect to an unfair trade practice, unconscionable act or practice relating to insurance may issue a warrant authorizing the Superintendent or person authorized by the Superintendent named in the warrant to enter and search that place and to make such inquiries and

copies of books, documents, correspondence and records as are deemed necessary, subject to such conditions as may be specified in the warrant.

(4) The owner or person in charge of the place referred to in this section and every person found therein shall give the Superintendent or person authorized by the Superintendent all reasonable assistance to enable that person to carry out his or her duties and functions under this section and shall furnish such information as that person may reasonably require.

(5) For the purposes of The Trade Practices Act, the interpretation of consumer transaction in that Act includes matters relating to insurance under this Act.

Regulations

Regulations

44. The Lieutenant-Governor in Council may make regulations

- (a) prescribing requirements, qualifications and conditions for granting and renewing licences;
- (b) prescribing classes of licences under paragraph (r) of section 2 to which this Act applies;
- (c) providing for examination of applicants for licences or renewal of licences or the equivalent to an examination;
- (d) classifying applicants for licences and restricting or prohibiting the licensing of any class of applicant;

- (e) prescribing classes of insurance for which licences may be issued or renewed under this Act;
- (f) prescribing the grounds upon which licences may be revoked, suspended or not renewed;
- (g) requiring adjusters, agents, brokers or representatives to supply information and make returns to the Superintendent;
- (h) requiring adjusters, agents, brokers or representatives to furnish a surety bond or other security on such form and terms and in such amount as the Superintendent prescribes; and requiring a certificate of errors and omissions insurance, in the amount the Superintendent prescribes;
- (i) exempting any class of claims, person or class of insurance from all or any section of this Act or the regulations;
- (j) prescribing the fees payable upon application for or renewal of or transfer of a licence or any other fees in connection with administration of this Act or the regulations;
- (k) prescribing the application forms for new and renewal licence applications and all other forms for use under this Act and the regulations and prescribing the time for making of an application;

- (l) requiring a yearly certificate of membership in a professional association whose objective is continuing education or supervision of adjusters or representatives;
- (m) providing for reviewing the continuance of a licence by the Superintendent in cases where an adjuster or representative is dismissed from a prescribed professional association;
- (n) respecting the method of handling premiums collected and requiring and regulating trust accounts and records to be maintained by agents, brokers and representatives;
- (o) respecting the replacement of an existing contract of life insurance by another contract of life insurance and prescribing the duties of insurers, agents, brokers or representatives in connection with the replacement of contracts of life insurance;
- (p) prescribing requirements for the issuing of special licences under section 24 and the returns that a person bound under that section must submit to the Superintendent;
- (q) prescribing the information a person licensed under section 24 must submit to the Superintendent pursuant to section 25;
- (r) prescribing the transitional requirements of any person

eligible for a licence under this Act or the regulations and a step licensing procedure; and

- (s) generally for the better carrying out of the purposes of this Act.

Offence and Penalty

Offence

45.(1) A natural person

- (a) who not being the holder of a licence;
- (b) who while his or her licence is suspended; or
- (c) who after his or her licence has been revoked or after it has expired and before it has been renewed,

acts as or represents or holds himself or herself out to be an adjuster, representative or student; or

- (d) who, being the holder of a licence which is in force, by any means acts as or represents or holds himself or herself out to be an adjuster, representative or student in any name other than stated in his or her licence,

is guilty of an offence.

(2) A body corporate or a partnership

- (a) while not being the holder of a licence;
- (b) which while its licence is suspended; or

- (c) which after its licence has been revoked or after it has expired and before it has been renewed,

acts as or represents or holds itself out to be an adjustment company, agent or broker; or

- (d) which, being the holder of a licence which is in force, by any means acts as or represents or holds itself out to be an adjustment company, agent or broker in any name other than stated in its licence,

is guilty of an offence.

(3) Every person who violates any provision of this Act or the regulations or of a condition on a licence or to which the licence is made subject is guilty of an offence.

(4) The directors and officers of any body corporate acting as an adjustment company, agent, broker or the partners of any partnership acting as an adjustment company, agent or broker who are individually licensed as adjusters or representatives are jointly and severally liable with the partnership or body corporate for all damage to third persons for which the body corporate or partnership is liable as a result of the acts of any person through whom the body corporate or partnership acts.

(5) An agent, broker or representative who knowingly procures by fraudulent representations, payment or the obligation for payment of any premium on an insurance policy is guilty of an offence.

(6) Any person who directly or indirectly induces or attempts to induce an insured to his or her financial prejudice to replace an existing contract of insurance by another contract of insurance is guilty of an offence.

(7) Any person licensed as an insurance agent, broker or representative under this Act, who, directly or indirectly,

(a) makes any false or misleading statement or representation in the solicitation or negotiation of insurance; or

(b) coerces or attempts to coerce a prospective buyer of insurance through influence of business, professional relationship or otherwise to give a preference which would not otherwise be given in the effecting of an insurance contract,

is guilty of an offence.

(8) Any agent, broker or representative who attempts the replacement of a contract of life insurance without proper disclosure to the client of advantages and disadvantages of such replacement in a form prescribed by the Superintendent is guilty of an offence.

(9) An agent, broker or representative who in any way violates the terms of the trust as outlined in section 30 or 31 is guilty of an offence.

(10) An insurer, agent, broker or representative who fails to notify the Superintendent within thirty days of the termination of the appointment of a licensee is guilty of an offence.

(11) Except as provided for in sections 24 and 25, any director, officer, agent, broker, representative, employee or other person representing or purporting to represent an insurer who is not licensed under The Insurance Companies Act or whose licence has been suspended or cancelled without revival thereof, and who undertakes or affects or agrees or offers to undertake or effect or solicit any contract of insurance or collect any premiums on behalf of such insurer shall be guilty of an offence.

(12) Every person who represents orally or in writing that the issue of a licence to an adjuster, adjustment company, agent, broker, representative or insurer or the printing or publication of an annual statement in any report or other publication of the Government of the province or any other circumstances of the supervision or regulation of the business of an adjuster, adjustment company, agent, broker, representative or insurer by law is a warranty or guarantee of the financial standing of the adjuster, adjustment company, agent, broker, representative or insurer is guilty of an offence.

(13) Any person who violates subsection (1) of section 23 is guilty of an offence.

Penalty

46.(1) A natural person who is guilty of an offence under this Act or the regulations is liable on summary conviction to a fine of not more than two thousand dollars and in default of payment to imprisonment for a term of not more than twelve months or to both the fine and imprisonment.

(2) A body corporate or partnership which is guilty of an offence under

this Act or the regulations is liable on summary conviction to a fine of not more than ten thousand dollars.

Limitation

47. Any prosecution for an offence against this Act and the regulations shall be commenced within two years of the discovery of the offence by the Superintendent.

Consequential Amendments

RSN 1970
c.54 Amdt.

48.(1) Section 292 of The Companies Act is repealed and the following substituted:

Definitions

"292. In this Part

- (a) "agent" means agent as defined by The Insurance Adjusters, Agents and Brokers Act;
- (b) "broker" means broker as defined by The Insurance Adjusters, Agents and Brokers Act;
- (c) "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;
- (d) "insurance" means the undertaking by one person to indemnify another person against loss or lia-

bility for loss in respect of a certain risk or peril to which the object of the insurance may be exposed, or to pay a sum of money or other thing of value upon the happening of a certain event, and includes life insurance;

- (e) "insurance company" means a company formed for the purpose of carrying on or transacting business as an insurer;
- (f) "insurer" means a person who undertakes or agrees or offers to undertake a contract of insurance;
- (g) "Minister" means Minister as defined in The Insurance Companies Act; and
- (h) "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."

(2) Sections 293 and 294 of the said Act are amended by striking out the words "or insurance agency" wherever they occur in those sections and by substituting the comma and words ", agent or broker".

(3) Section 295 of the said Act is amended

- (a) by repealing paragraph (b) and by substituting the following:
 - "(b) an agent or broker which permits the agent or broker to engage in any business other than that of an agent or broker,"; and
- (b) by repealing that portion of section 295 that follows paragraph (b) and by substituting the following:
 - "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 agent or broker, as the case may be."
- (4) Section 297 of the said Act is amended by striking out the words "An insurance agency" and by substituting the words "An agent or broker".
- (5) Section 298 of the said Act is amended
 - (a) in paragraph (b) of subsection(1) by striking out the words "or insurance agency" and by substituting the comma and words ", agent or broker";
 - (b) in paragraph (h) of subsection (1) by striking out the words "or insurance agency" and by substituting the comma and words ", agent or broker";

- (c) in subparagraph (iv) of paragraph (h) of subsection (1) by striking out the words "or insurance agency" and by substituting the comma and words ", agent or broker";
- (d) in subsection (2) by striking out the words "and insurance agencies" and by substituting the comma and words ", agents and brokers"; and
- (e) in subsection (3) by striking out the words "or insurance agency" and by substituting the comma and words ", agent or broker".

1984 c. 41
Amdt.

49.(1) Schedule A of The Department of Consumer Affairs and Communications Act is amended

- (a) by repealing item 19 and by substituting the following:

"19. The Insurance Adjusters, Agents and Brokers Act.";
and

- (b) by repealing item 26.

(2) Schedule B of the said Act is amended

- (a) by repealing item 4 and by substituting the following:

"4. The Insurance Adjusters, Agents and Brokers Act";
and

- (b) by repealing item 9.

RSN 1970
c. 176 Amdt.

50.(1) Paragraph (b) of section 2 of The Insurance Companies Act is repealed and the following substituted:

"(b) "agent" means agent as defined by The Insurance Adjusters, Agents and Brokers Act;".

(2) Section 2 of the said Act is amended by adding immediately after paragraph (e) the following:

"(e.1) "broker" means broker as defined by The Insurance Adjusters, Agents and Brokers Act;".

(3) Section 2 of the said Act is amended by adding immediately after paragraph (rr) the following:

"(rr.1) "representative" means representative as defined by The Insurance Adjusters, Agents and Brokers Act;".

(4) Subsection (2) of section 82 of the said Act is amended by striking out the words "an agent of life insurance under The Life and Accident Insurance Agents (Licensing) Act" and by substituting the words "a representative of a life insurer licensed under The Insurance Adjusters, Agents and Brokers Act".

Repeal and Commencement

RSN 1970
cs. 175 &
204 Rep.

51. The Insurance Adjusters Act
and The Life and Accident Insurance
Agents (Licensing) Act are repealed.

Commencement

52. This Act or any section thereof comes into force on a day or days to be proclaimed by the Lieutenant-Governor in Council.



CHAPTER 37

AN ACT TO IMPLEMENT AN AGREEMENT BETWEEN THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF NEWFOUNDLAND AND LABRADOR ON OFFSHORE PETROLEUM RESOURCE MANAGEMENT AND REVENUE SHARING

(Assented to June 17, 1986)

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WHEREAS the Government of Canada and the Government of Newfoundland and Labrador have entered into the Atlantic Accord and have agreed that neither Government will introduce amendments to this Act or any regulation made thereunder without the consent of both Governments:

Be it therefore enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

Short title

Short title 1. This Act may be cited as The Canada-Newfoundland Atlantic Accord Implementation (Newfoundland) Act.

Interpretation

Definitions 2. In this Act

(a) "Atlantic Accord" means the Memorandum of Agreement between the Government of

Canada and the Government of the province on offshore oil and gas resource management and revenue sharing dated February 11, 1985, and includes any amendments thereto;

- (b) "Board" means the Canada-Newfoundland Offshore Petroleum Board established by the joint operation of section 9 of this Act and section 9 of the Federal Act;
- (c) "Canada-Newfoundland benefits plan" means a plan submitted pursuant to subsection (2) of section 45;
- (d) "Chief Executive Officer" means the Chief Executive Officer of the Board appointed pursuant to section 24;
- (e) "development plan" means a plan submitted pursuant to subsection (2) of section 134 for the purpose of obtaining approval of the general approach of developing a pool or field as proposed in the plan;
- (f) "Federal Act" means the Canada-Newfoundland Atlantic Accord Implementation Act;
- (g) "Federal Government" means the Governor General in Council;
- (h) "Federal Minister" means the Minister of Energy, Mines and Resources of Canada or such other Minister of the Crown in

right of Canada as may be designated under the laws of Canada as the Minister responsible for the Federal Act;

- (i) "field"
 - (i) means a general surface area underlain or appearing to be underlain by one or more pools, and
 - (ii) includes the subsurface regions vertically beneath the general surface area referred to in subparagraph (i);
- (j) "former regulations" means the Canada Oil and Gas Land Regulations made pursuant to the Public Lands Grants Act (Canada) and the Territorial Lands Act (Canada) and includes orders made pursuant to those regulations;
- (k) "fundamental decision" means a decision made by the Board respecting the exercise of a power or the performance of a duty pursuant to a provision of this Act that expressly provides for the exercise of the power or the performance of the duty subject to sections 31 to 40;
- (l) "gas" means natural gas and includes all substances, other than oil, that are produced in association with natural gas;
- (m) "government" means the Federal Government, the Provincial

Government or both, as the context requires;

- (n) "Minister" means the Federal Minister, the Provincial Minister or both, as the context requires;
- (o) "offshore area" means those submarine areas lying seaward of the low water mark of the province and extending, at any point, as far as
 - (i) any prescribed line,
 - (ii) where no line is prescribed at that location, the outer edge of the continental margin or a distance of two hundred nautical miles from the baselines from which the breadth of the territorial sea of Canada is measured, whichever is the greater;
- (p) "oil" means
 - (i) crude oil regardless of gravity produced at a well head in liquid form, and
 - (ii) any other hydrocarbons, except coal and gas, and, without limiting the generality of the foregoing, hydrocarbons that may be extracted or recovered from deposits of oil sand, bitumen, bituminous sand, oil shale or from any other types of

deposits on the seabed or
subsoil thereof of the
offshore area;

- (q) "petroleum" means oil or gas;
- (r) "pool" means a natural underground reservoir containing or appearing to contain an accumulation of petroleum that is separated or appears to be separated from any other such accumulation;
- (s) "prescribed" means prescribed by regulations made pursuant to this Act;
- (t) "Provincial Government" means the Lieutenant-Governor in Council; and
- (u) "Provincial Minister" means the Minister of the Crown in right of the province designated by order of the Lieutenant-Governor in Council pursuant to this paragraph as the Provincial Minister for the purposes of this Act or any provision thereof.

Construct-
ion

3. For greater certainty, the provisions of this Act shall not be interpreted as providing a basis for any claim by or on behalf of Canada in respect of any interest in or legislative jurisdiction over any offshore area or any living or non-living resources of any offshore area within the jurisdiction of the province.

Precedence
over other

4. In case of any inconsistency or conflict between

Acts

- (a) this Act or any regulations made thereunder; and
- (b) any Act of the Parliament of Canada that applies federal and provincial laws to the offshore area or any regulations made thereunder,

this Act and the regulations made thereunder take precedence.

Prescribing Limits of Offshore Area
 and Settlement Procedure for Disputes

Regulations
 re offshore
 area

5.(1) Subject to the approval of the Provincial Minister, the Governor General in Council may make regulations prescribing lines enclosing areas adjacent to the province for the purpose of paragraph (o) of section 2.

(2) The Federal Minister may cause charts to be issued setting out the offshore area or any portion thereof as may be set out consistent with the nature and scale of the chart.

(3) In any legal or other proceedings, a chart purporting to be issued by or under the authority of the Federal Minister is conclusive proof of the limits of the offshore area or portion thereof set out in the chart without proof of the signature or official character of the person purporting to have issued the chart.

Disputes
 between
 neighbour-
 ing pro-
 vinces

6.(1) In this section, "agreement" means an agreement between the Government of Canada and the government of a province respecting resource management and revenue sharing in relation to activities respecting the exploration for

or the production of petroleum carried out in any area to which the Oil and Gas Production and Conservation Act (Canada) applies.

(2) Where a dispute between the province and any other province that is a party to an agreement arises in relation to a line or portion thereof prescribed or to be prescribed for the purpose of the definition "offshore area" in paragraph (o) of section 2 and the Government of Canada is unable, by means of negotiation, to bring about a resolution of the dispute within a reasonable time, the dispute shall, at such time as the Federal Minister deems appropriate, be referred to an impartial person, tribunal or body and settled by means of the procedure determined in accordance with subsection (3).

(3) For the purposes of this section, the person, tribunal or body to which a dispute is to be referred, the constitution and membership of any tribunal or body and the procedures for the settlement of a dispute shall be determined by the Federal Minister after consultation with the provinces concerned in the dispute.

(4) Where the procedure for the settlement of a dispute pursuant to this section involves arbitration, the arbitrator shall apply the principles of international law governing maritime boundary delimitation, with such modifications as the circumstances require.

(5) Notwithstanding section 7 of the Federal Act, where a dispute is settled pursuant to this section and a regulation under subsection (1) of section 5 prescribing the line in relation

to which the dispute arose is made in accordance with the settlement, the regulation is not subject to the procedure set out in section 7 of the Federal Act with respect to the portion of the line to which the dispute related.

Condition Precedent for Certain
 Regulations

Approval of
 Federal
 Minister
 prior to
 making of
 regulations

7. Before a regulation is made pursuant to subsection (7) of section 41, section 63, subsection (2) of section 66, sections 113, 117, 120 and 144, subsection (4) of section 153 and section 197, the Provincial Minister shall consult the Federal Minister with respect to the proposed regulation and no regulation shall be so made without the approval of the Federal Minister.

Application

Application

8.(1) This Act applies within the offshore area.

(2) Notwithstanding Part I of The Petroleum and Natural Gas Act, Part I of The Petroleum and Natural Gas Act and the regulations made under Part I of that Act do not apply within the offshore area.

PART I

JOINT MANAGEMENT

Establishment of Board

Jointly
established
Board

9.(1) There is established, by the joint operation of this Act and the Federal Act, a board, to be known as the Canada-Newfoundland Offshore Petroleum Board.

(2) Subject to subsections (3) and (4), the Board shall, for all purposes, be treated as having been established by or under a law of the province.

(3) The Board has the legal powers and capacities of a corporation incorporated under the Canada Business Corporations Act (Canada), including those set out in section 20 of The Interpretation Act.

(4) The Board may only be dissolved by the joint operation of an Act of the Parliament of Canada and an Act of the Legislature.

Members of
Board

10.(1) The Board shall consist of seven members.

(2) Three members of the Board are to be appointed by the Federal Government, three by the Provincial Government and the Chairman of the Board is to be appointed by both the Federal Government and the Provincial Government.

(3) One or two members of the Board may be designated to be vice-chairmen of the Board if they are so designated by both the Federal Government and the Provincial Government.

(4) The designation of a vice-chairman of the Board pursuant to subsection (3) is effective after both

governments have each made the designation.

(5) Each government may appoint one alternate member to act as a member of the Board in the absence of any of the members of the Board appointed by that government.

(6) Notwithstanding subsection (2) or (5), any member or alternate member of the Board may be appointed by both the Federal Government and the Provincial Government.

Qualifications of members

11.(1) No member of the Board shall, during the term of office of that member on the Board, be employed in the Public Service of Canada or be a civil servant in the province.

(2) In this section

(a) "civil servant" has the meaning given the expression "civil servant" in The Civil Service Act; and

(b) "Public Service of Canada" has the same meaning as in the Federal Act.

Consultation & appointment of Chairman

12.(1) Consultation between the two governments with respect to the selection of the Chairman of the Board shall be deemed to commence

(a) six months prior to the expiration of the term of office of the incumbent Chairman, or

(b) where applicable, on the date of receipt by the Board of notice of the death, resignation or termination of appoint-

ment of the incumbent Chairman,

whichever occurs earlier.

(2) Where the two governments fail to agree on the appointment of the Chairman of the Board within three months after the commencement of consultation between the governments, the Chairman shall be selected by a panel, consisting of three members and constituted in accordance with this section, unless, at any time prior to the selection of the Chairman by the panel, the two governments agree on the appointment.

(3) One member of the panel shall be appointed by each government within thirty days after the three months referred to in subsection (2).

(4) The chairman of the panel shall be appointed

(a) jointly by the two members of the panel appointed pursuant to subsection (3) within thirty days after the later of the two appointments made pursuant to that subsection; or

(b) where the two members of the panel fail to agree on the appointment of the chairman of the panel within the thirty day period referred to in paragraph (a), by the Chief Justice of Newfoundland within thirty days after the expiration of that period.

(5) The Chairman of the Board shall be selected by the panel within

sixty days after the appointment of the chairman of the panel.

(6) The decision of the panel selecting a Chairman of the Board is final and binding on both governments.

Terms &
 conditions
 of appoint-
 ments

13.(1) Subject to section 15, the salary and other terms and conditions of the appointment of the Chairman of the Board or any other member or alternate member appointed by both governments, including the effective date of the appointment, shall be fixed by an order of the Federal Government and an order of the Provincial Government after agreement has been reached by both governments on the salary and other terms and conditions.

(2) The salary and other terms and conditions of the appointment of any member appointed by either the Federal Government or the Provincial Government shall be agreed on by both governments.

Absence or
 incapacity
 of chair-
 man

14. The Board shall designate a member to act as Chairman of the Board during any absence or incapacity of the Chairman or vacancy in the office of Chairman, and that person, while acting as Chairman, has and may exercise all of the powers and perform all of the duties and functions of the Chairman.

Term of
 office

15.(1) The first Chairman of the Board shall be appointed for a term of seven years.

(2) The first three members of the Board to be appointed by each government shall be appointed for terms of four, five and six years, respectively.

(3) On the expiration of the initial terms of office referred to in subsections (1) and (2), the Chairman and members of the Board shall be appointed for terms of six years.

(4) A member of the Board, including the Chairman, shall hold office during good behaviour, but may be removed for cause

(a) where that member is appointed by either government, by that government; or

(b) where that member is appointed by both governments, by both governments.

(5) On the expiration of a term of office, the Chairman or a member of the Board is eligible for re-appointment for one or more further terms.

Conflict of
interest
guidelines

16. Members of the Board, including the Chairman, and the Chief Executive Officer appointed pursuant to subsection (1) of section 24 shall be subject to conflict of interest guidelines established jointly by the Federal Minister and Provincial Minister and are not subject to any conflict of interest guidelines established by the Provincial Government.

Functions of Board

Functions of
Board

17.(1) The Board shall perform such duties and functions as are conferred or imposed on the Board by or pursuant to the Atlantic Accord or this Act.

(2) The Board may make recommendations to both governments with respect

to proposed amendments to this Act, the Federal Act and any regulations made under those Acts.

Access to
information
by govern-
ments

18.(1) The Federal Minister and the Provincial Minister are entitled to access to any information or documentation relating to petroleum resource activities in the offshore area that is provided for the purposes of this Act or any regulation made thereunder and such information or documentation shall, on the request of either Minister, be disclosed to that Minister without requiring the consent of the party who provided the information or documentation.

(2) Section 114 applies, with such modifications as the circumstances require, in respect of any disclosure of information or documentation or the production or giving of evidence relating thereto by a Minister as if the references in that section to the administration or enforcement of a Part of this Act included references to the administration or enforcement of the Federal Act or any Part thereof.

Administration

Meetings of
Board

19. A meeting of the Board shall be held

- (a) once every month unless the members of the Board unanimously agree to defer such a meeting; and
- (b) at any other time
 - (i) at the call of the Chairman of the Board,

(ii) on the request of any two members of the Board, or

(iii) on the request of the Federal Minister or the Provincial Minister to review any matter referred to it by that Minister.

Quorum &
 majority
 vote

20.(1) Four members constitute a quorum of the Board.

(2) Where, in the absence of unanimous agreement, a vote is required to be taken in respect of a decision of the Board, the decision shall be made on the basis of a majority vote of the members of the Board.

Location of
 offices &
 staff

21. The principal office and staff of the Board shall be located in the province.

Storage of
 information

22. The Board shall establish, maintain and operate a facility in the province for the storage and curatorship of all geophysical records and geological and hydrocarbon samples relating to the offshore area.

By-laws &
 guidelines

23.(1) Subject to this Act and the Atlantic Accord, the Board may

(a) make by-laws respecting

(i) the members, officers and employees of the Board,

(ii) the attendance and participation, including voting rights, at meetings of the Board of alternate members of the Board appointed pursuant

to subsection (5) of section 10,

(iii) the manner of appointing the officers and employees of the Board on the basis of merit, including the holding of open competitions therefor,

(iv) the procedures to be followed in the performance of any of the duties and functions of the Board,

(v) the conduct of meetings of the Board,

(vi) the manner of dealing with matters and business before the Board, and

(vii) generally, the carrying on of the work of the Board and the management of internal affairs thereof; and

(b) establish conflict of interest guidelines respecting persons employed by the Board pursuant to subsection (1) of section 25.

Chief
 Executive
 Officer

24.(1) There shall be a Chief Executive Officer of the Board who,

(a) where both the Federal Government and the Provincial Government appoint the Chairman as Chief Executive Officer, is Chairman of the Board; or

(b) in any other case, is to be appointed by the Board by means of an open competition.

(2) The appointment of a Chief Executive Officer pursuant to paragraph (b) of subsection (1) is subject to the approval of both governments.

(3) Where either government fails to make an appointment pursuant to paragraph (a) of subsection (1) or to approve the appointment of a Chief Executive Officer pursuant to paragraph (b) of subsection (1), the Chief Executive Officer shall be appointed by both the Federal Government and the Provincial Government after having been selected in accordance with section 12 and that section applies, with such modifications as the circumstances require, to the selection of the Chief Executive Officer.

(4) Subsection (1) of section 13 applies, with such modifications as the circumstances require, to the appointment of the Chief Executive Officer pursuant to paragraph (a) of subsection (1) or subsection (3).

(5) The Board shall designate a person to act as Chief Executive Officer during any absence or incapacity of that Officer or vacancy in the office of Chief Executive Officer and that person, while acting as Chief Executive Officer, has and may exercise all the powers and perform all of the duties and functions of that office.

Staff of
the Board

25.(1) The Board may, on the recommendation of the Chief Executive Officer, employ such other officers and employees as are necessary to properly

perform the duties and functions of the Board under this Act and the Atlantic Accord.

(2) Every person employed pursuant to subsection (1) shall be appointed on the basis of merit.

(3) Except as provided in subsections (4) and (5), every person employed pursuant to subsection (1) is deemed not to be employed in the public service of Canada or of the province.

(4) Notwithstanding The Newfoundland Public Service Commission Act, 1973, for the purpose of being eligible to enter competitions under that Act and for the purposes of section 13 of that Act, any person who, immediately prior to becoming employed by the Board, was employed in the Public Service of the province shall be deemed to be a person employed in the Public Service in the province in a position of an occupational nature and at a level equivalent to the position in which that person is employed by the Board.

(5) Notwithstanding The Newfoundland Public Service Commission Act, 1973, for the purpose of being eligible to enter competitions under that Act and for the purposes of section 13 of that Act, any person who, immediately prior to becoming employed by the Board, was not employed in the Public Service of the province shall, two years after becoming employed by the Board, be deemed to be a person employed in the Public Service of the province in a position of an occupational nature and at a level equivalent to the position in which that person is employed by the Board.

Auditor

26. The Board shall appoint an auditor of the Board, for such term as is set by the Board, for the purposes of auditing the financial statements of the Board.

Budget &
appropri-
ation

27.(1) The Chief Executive Officer shall, in respect of each fiscal year, prepare a budget for the Board sufficient to permit the Board to properly exercise its powers and perform its duties and functions.

(2) Following approval of the budget by the Board, the budget shall be submitted to the Federal Minister and the Provincial Minister, at such time as may be specified by each Minister, for their consideration and approval.

(3) Where it appears that the actual aggregate of the expenditures of the Board in respect of any fiscal year is likely to be substantially greater or less than that estimated in its budget in respect of that fiscal year, the Board shall submit to both Ministers for their consideration and approval a revised budget in respect of that fiscal year containing such particulars as may be requested by either Minister.

(4) The Provincial Government shall pay one-half of the aggregate of the expenditures set out in the budget or revised budget, where applicable, submitted and approved pursuant to this section in respect of each fiscal year.

(5) Subject to any other Act of the Legislature that appropriates moneys for the payment required by subsection (4), the sums required for such payment shall be paid out of the Consolidated

Revenue Fund from time to time as required.

Access to
books &
accounts

28. Subject to subsection (2) of section 18, both the Federal Minister and the Provincial Minister are entitled to have access to the books and accounts of the Board.

Annual
report

29.(1) The Board shall, in respect of each fiscal year, prepare a report and submit it to the Federal Minister and the Provincial Minister not later than ninety days after the expiration of that fiscal year.

(2) Each annual report submitted pursuant to subsection (1) shall contain an audited financial statement and a description of the activities of the Board during the fiscal year covered by the report.

(3) The Provincial Minister shall cause the report referred to in this section

- (a) to be laid before the Assembly on any of the first fifteen days on which the Assembly is sitting after the day the report is submitted to the Provincial Minister; and
- (b) where it is not possible to cause the report to be laid pursuant to paragraph (a) within thirty days after the day the report is submitted to the Provincial Minister, to be published within that thirty day period.

Decisions in Relation to Offshore
Management

Board's
decision
final

30. Subject to this Act, the exercise of a power or the performance of a duty by the Board pursuant to this Act is final and not subject to the review or approval of either government or either Minister.

Notice of
fundamental
decisions
& advice
by Ministers

31.(1) Where a fundamental decision is made by the Board, the Board shall, forthwith after making the decision, give written notice of that decision to the Federal Minister and the Provincial Minister.

(2) Within thirty days after receipt of a notice of a fundamental decision pursuant to subsection (1), the Federal Minister and the Provincial Minister shall each advise, in writing, the Board and each other whether that Minister approves or disapproves that decision and where the Board does not receive the advice within those thirty days, the Board shall be deemed, for the purposes of section 32, to be advised, in writing, on the expiration of that period, of the approval of that decision by that Minister.

Conditions
for imple-
mentation of
fundamental
decision

32.(1) A fundamental decision shall not be implemented unless the Board is advised, in writing, that

- (a) both the Federal Minister and the Provincial Minister approve that decision; or
- (b) in any other case, the Minister having authority in relation to that decision, as determined under section 34, approves that decision and, where the other Minister has

exercised the power to suspend the approval of that decision pursuant to section 39,

- (i) the period of suspension referred to in that section has expired, or
- (ii) agreement is reached between both Ministers to approve that decision,

whichever occurs first.

(2) Where the conditions referred to in subsection (1) have been satisfied in respect of a fundamental decision, that decision shall be implemented forthwith by the Board.

Definitions
re ss. 34
to 37

33. In this section and sections 34 to 37

- (a) "security of supply", in respect of any period, means the anticipation of self-sufficiency during each of the five calendar years in that period, taking into account the aggregate of anticipated additions to productive capacity and anticipated adjustments to refining capacity;
- (b) "self-sufficiency" means a volume of suitable crude oil and equivalent substances available from domestic Canadian hydrocarbon producing capacity that is adequate to supply the total feedstock requirements of Canadian refineries necessary to satisfy the total refined product

requirements of Canada, excluding those feedstock requirements necessary to produce specialty refined products; and

- (c) "suitable crude oil and equivalent substances" mean those substances that are appropriate for processing in Canadian refineries and that are potentially deliverable to Canadian refineries.

Self-
sufficiency
& security
of supply

34.(1) Where, in respect of any period referred to in subsection (2) or (3) of section 35, a determination is made that self-sufficiency and security of supply do not exist, the Federal Minister has authority in relation to any fundamental decision, other than a fundamental decision referred to in subsection (2), made during that period.

(2) Subject to subsection (3), the Provincial Minister has authority in relation to a fundamental decision referred to in paragraph (a) of subsection (4) of section 134.

(3) Where the approval or disapproval by the Provincial Minister of a fundamental decision referred to in paragraph (a) of subsection (4) of section 134 would unreasonably delay the attainment of self-sufficiency or security of supply, the Federal Minister may substitute therefor the approval or disapproval, as the case may be, of the Federal Minister, and where the Federal Minister does so, that Minister shall, for the purposes of this Act, be considered to have authority in relation to that fundamental decision.

(4) Where, in respect of any period referred to in subsection (3) of section 35, a determination is made that self-sufficiency and security of supply exists, the Provincial Minister has authority in relation to any fundamental decision made during that period.

Determination
binding

35.(1) For the purposes of this Act, where a determination referred to in subsection (1) or (4) of section 34 is made by both governments or by a panel pursuant to section 36 or 37 or is deemed to have been made pursuant to subsection (2), it is final and binding for the duration of the period in respect of which it is made.

(2) For the purposes of section 34, the first period shall commence on January 1, 1986 and terminate on December 31, 1990 and, in respect of that period, a determination shall be deemed to have been made, for all purposes of this Act, that self-sufficiency and security of supply do not exist.

(3) For the purposes of section 34, each period following the period referred to in subsection (2) shall commence on the expiration of the period immediately preceding that period and shall be for a duration of five successive calendar years.

Where no
agreement
on deter-
minations
re self-
sufficiency

36.(1) Consultation between the two governments with respect to the making of a determination referred to in subsection (1) or (4) of section 34 shall be deemed to commence one year prior to the expiration of every period in respect of which such a determination is made.

(2) Where the two governments fail to agree on a determination referred to in subsection (1) within the three months following the commencement of consultation between the governments, the determination shall be made by a panel consisting of three members, constituted in accordance with subsections (3) and (4) of section 12, within sixty days after the appointment of the chairman of the panel unless, at any time prior thereto, the two governments agree on the determination.

Determinat-
ion of
unreason-
able delay

37.(1) Where, within sixty days after an approval or disapproval by the Provincial Minister pursuant to subsection (2) of section 34, the two governments fail to agree whether the approval or disapproval would unreasonably delay the attainment of self-sufficiency or security of supply, that determination shall be made by a panel consisting of three members constituted in accordance with subsection (2), within forty-five days after the appointment of the chairman of the panel.

(2) For the purposes of subsection (1), one member of the panel shall be appointed by each government within thirty days after the sixty days referred to in subsection (1) and the chairman of the panel shall be appointed in accordance with subsection (4) of section 12 and for that purpose, subsection (4) of section 12 applies, with such modifications as the circumstances require.

Determinat-
ion not
subject to
review

38. Where a determination referred to in section 36 or 37 is made by a panel pursuant to that section, that determination is not subject to be reviewed or set aside by any government, court or other body.

Suspensive
vetoes

39.(1) The Minister who does not have authority in relation to a fundamental decision, as determined under section 34, may, on giving written notice to the Board and the Minister who has such authority, suspend, during a period of ninety days, the approval of the fundamental decision by the Minister who has that authority.

(2) The period of ninety days referred to in subsection (1) commences on the day the Board is advised, in accordance with section 31, of the approval of the fundamental decision by the Minister having authority in relation to the fundamental decision.

Supply
shortfall

40.(1) Notwithstanding any other provision of this Act, in the event of a sudden domestic or import supply shortfall of suitable crude oil and equivalent substances, the Board shall, on request by the Federal Minister, cause production of suitable crude oil and equivalent substances to be increased, consistent with good oil field practice.

(2) Notwithstanding any other provision of this Act, where the Government of Canada has obligations with respect to the allocation of petroleum pursuant to the Agreement On An International Energy Program dated November 18, 1974, the Board shall, where directed to do so by the Federal Minister and during the period that those obligations continue, take such measures as are necessary to comply with those obligations and as are fair and equitable in relation to other hydrocarbon producing regions of Canada.

Regional Security of Supply

Regional
security of
supply

41.(1) For the purposes of this section "shortfall of petroleum deliveries in the province" means deliveries of petroleum that are inadequate to supply, on commercial terms,

- (a) the end-use consumption and feedstock requirements of industrial facilities that are in place in the province on the day of the coming into force of this Act;
- (b) the feedstock requirements of the refining facilities existing at Come-by-Chance if those facilities were operating at capacity on the day of the coming into force of this Act or any refining facility constructed in the province to replace those facilities; or
- (c) the feedstock requirements of any refining facility located in the province that was not in place on the coming into force of this Act, other than a facility referred to in paragraph (b), where the feedstock requirements required to satisfy the demand of industrial capacity, on the day of the coming into force of this Act, in the Provinces of Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland have been met.

(2) Where there is a shortfall of petroleum deliveries in the province, the Provincial Minister may, after consulting with the Federal Minister,

give notice to holders of production licences in the offshore area that the facilities in paragraphs (a), (b) and (c) of subsection (1) that are specified in the notice have, during the term of the notice, the first option to acquire, on commercial terms, petroleum produced in the offshore area unless a sales contract with respect to that petroleum has been entered into prior to the giving of the notice.

(3) Any contract entered into after the giving of the notice referred to in subsection (2) shall be deemed to be varied or suspended to the extent necessary to give effect to that notice.

(4) The term of a notice given under subsection (2) is the period during which a shortfall of petroleum deliveries in the province continues to exist.

(5) Where the Federal Minister or a holder of a production licence to whom a notice has been given under subsection (2) does not agree with the Provincial Minister that a shortfall of petroleum deliveries in the province exists or continues to exist, the matter shall be referred to arbitration in the manner prescribed.

(6) Where it is determined pursuant to arbitration that a shortfall of petroleum deliveries in the province does not exist or continue to exist, the notice given under subsection (2) shall be deemed to be revoked and ceases to have effect on the date on which the determination is made.

(7) Subject to section 7, the Lieutenant-Governor in Council may make regulations for carrying out the purposes and provisions of this section and, without limiting the generality of the foregoing, may make regulations

- (a) defining the expression "commercial terms" or providing for arbitration to establish commercial terms in any particular case;
- (b) governing, for the purposes of this section, arbitration and the making of arbitration orders and appeals from and enforcement of arbitration orders; and
- (c) prescribing the manner of exercising a first option to acquire that is granted pursuant to a notice given under subsection (2).

Ministerial Directives

Ministerial
directives

42.(1) The Federal Minister and the Provincial Minister may jointly issue to the Board written directives in relation to

- (a) fundamental decisions;
- (b) decisions made by the Board respecting the exercise of a power pursuant to paragraph (b) of subsection (1) of section 55;
- (c) public reviews conducted pursuant to section 44;

- (d) Canada/Newfoundland benefits plans and any of the provisions thereof; and
- (e) studies to be conducted by the Board and advice with respect to policy issues to be given by the Board to the Federal Minister and the Provincial Minister.

(2) The Board shall comply with a directive issued under subsection (1).

(3) Directives issued under subsection (1) shall be deemed not to be subordinate legislation for the purposes of The Statutes and Subordinate Legislation Act.

(4) Where a directive is issued under subsection (1), a notice shall be published in the Gazette that the directive has been issued and that the text thereof is available for inspection by any person on request made to the Board.

Plan for Interests

Plan for
interests

43.(1) During the first month of each calendar year, the Board shall submit to the Federal Minister and the Provincial Minister a plan outlining the anticipated decisions of the Board during that calendar year respecting calls for bids with respect to interests to be issued pursuant to Part II in relation to the portions of the offshore area and the issuance and terms and conditions of such interests.

(2) Where the Minister having authority in relation to fundamental decisions, as determined under subsect-

ion (1) or (4) of section 34, is of the opinion that a plan referred to in subsection (1) or (3) does not provide adequately for the attainment or maintenance of self-sufficiency and security of supply within the meaning of section 33, that Minister may reject the plan and where that Minister does so, shall inform the Board of the reasons for so doing.

(3) Where the Board is informed of a Minister's rejection of its plan and the reasons therefor, the Board shall, within sixty days after being so informed, prepare a revised plan taking into account those reasons and submit the revised plan to the Federal Minister and the Provincial Minister.

Public Review

Public
review by
the Board

44.(1) Subject to any directives issued under subsection (1) of section 42, the Board shall conduct a public review in relation to any potential development of a pool or field unless the Board is of the opinion that the public hearing is not required on any ground the Board considers to be in the public interest.

(2) Where a public review is conducted in relation to any potential development of a pool or field, the Board may

- (a) establish terms of reference and a timetable that will permit a comprehensive review of all aspects of the development, including those within the authority of the Parliament of Canada or of the Legislature;

- (b) appoint one or more commissioners and, where there is to be more than one commissioner, appoint as commissioners persons nominated by each of the governments in recognition of the authority of Ministers of the Crown in right of Canada or of the province under any Act of Parliament of Canada or of the Legislature, other than this Act or the Federal Act, in relation to the development;
- (c) where the potential development has been proposed to the Board by any person, require that person to submit and make available for public distribution a preliminary development plan, an environmental impact statement, a socio-economic impact statement, a preliminary Canada-Newfoundland benefits plan and any other plan specified by the Board; and
- (d) cause the commissioners to hold public hearings in appropriate locations in the province or elsewhere in Canada and report thereon to the Board, the Federal Minister and the Provincial Minister.

(3) On the request of the Board, the Provincial Government may, subject to such terms and conditions as it considers necessary, confer on the commissioners appointed pursuant to paragraph (b) of subsection (2) all or any of the powers conferred on commissioners under The Public Enquiries Act.

(4) The Commissioners shall make their recommendations respecting any preliminary plan or statement submitted pursuant to paragraph (c) of subsection (2) within two hundred and seventy days after their receipt of the plan or statement or such shorter period as may be set by the Board.

Canada-Newfoundland
Benefits Plan

Canada-
Newfound-
land bene-
fits plan

45.(1) In this section "Canada-Newfoundland benefits plan" means a plan for the employment of Canadians and, in particular, members of the labour force of the province and, subject to paragraph (d) of subsection (3), for providing manufacturers, consultants, contractors and service companies in the province and other parts of Canada with a full and fair opportunity to participate on a competitive basis in the supply of goods and services used in any proposed work or activity referred to in the benefits plan.

(2) Before the Board may approve any development plan pursuant to paragraphs (a) and (b) of subsection (4) of section 134 or authorize any work or activity under paragraph (b) of subsection (1) of section 133, a Canada-Newfoundland benefits plan shall be submitted to and approved by the Board, unless the Board directs that such requirements need not be complied with.

(3) A Canada-Newfoundland benefits plan shall contain provisions intended to ensure that

(a) before carrying out any work or activity in the offshore area, the corporation or other

body submitting the plan shall establish in the province an office where appropriate levels of decision-making are to take place;

- (b) consistent with the Canadian Charter of Rights and Freedoms, individuals resident in the province shall be given first consideration for training and employment in the work program for which the plan was submitted and any collective agreement entered into by the corporation or other body submitting the plan and an organization of employees respecting terms and conditions of employment in the offshore area shall contain provisions consistent with this paragraph;
- (c) expenditures shall be made for research and development to be carried out in the province and for education and training to be provided in the province; and
- (d) first consideration shall be given to services provided from within the province and to goods manufactured in the province, where those services and goods are competitive in terms of fair market price, quality and delivery.

(4) The Board may require that any Canada-Newfoundland benefits plan include provisions to ensure that disadvantaged individuals or groups have access to training and employment opportunities

and to enable such individuals or groups or corporations owned or cooperatives operated by them to participate in the supply of goods and services used in any proposed work or activity referred to in the benefits plan.

(5) In reviewing any Canada-Newfoundland benefits plan, the Board shall consult with both Ministers on the extent to which the plan meets the requirements set out in subsections (1), (3) and (4).

(6) Subject to any directives issued under subsection (1) of section 42, the Board may approve any Canada-Newfoundland benefits plan.

Coordination of Government
Departments and Agencies

Coordinat-
ion

46.(1) The Board shall, to ensure effective coordination and avoid duplication of work and activities, conclude with the appropriate departments and agencies of the Government of Canada and of the Government of the province memoranda of understanding in relation to

- (a) environmental regulation;
- (b) emergency measures;
- (c) coastguard and other marine regulation;
- (d) employment and industrial benefits for Canadians in general and the people of the province in particular and the review and evaluation procedures to be followed by both governments and the Board in relation to such benefits;

(e) occupational health and safety; and

(f) such other matters as are appropriate.

(2) The Federal Minister and the Provincial Minister shall be parties to any memorandum of understanding concluded in relation to a matter referred to in paragraph (d) of subsection (1).

PART II

PETROLEUM RESOURCES

INTERPRETATION

Interpretation

47.(1) In this Part

(a) "call for bids" means a call for bids made in accordance with section 57;

(b) "commercial discovery" means a discovery of petroleum that has been demonstrated to contain petroleum reserves that justify the investment of capital and effort to bring the discovery to production;

(c) "commercial discovery area" means, in relation to a declaration of commercial discovery made pursuant to subsection (1) or (2) of section 77, those portions of the offshore area described in the declaration;

(d) "Crown reserve area" means portions of the offshore area

in respect of which no interest is in force;

- (e) "former exploration agreement" means an exploration agreement under the Canada Oil and Gas Land Regulations;
- (f) "former lease" means an oil and gas lease under the Canada Oil and Gas Land Regulations;
- (g) "former permit" means an exploratory permit under the Canada Oil and Gas Land Regulations;
- (h) "former special renewal permit" means a special renewal permit under the Canada Oil and Gas Land Regulations;
- (i) "holder" and "interest holder" means, in respect of an interest or a share therein, the person indicated, in the register maintained pursuant to Division VII, as the holder of the interest or the share;
- (j) "interest" means any former exploration agreement, former lease, former permit, former special renewal permit, exploration licence, production licence or significant discovery licence;
- (k) "interest owner" means the interest holder who holds an interest or the group of interest holders who hold all of the shares in an interest;

- (1) "prescribed" means
- (i) in the case of a form or the information to be given on a form, prescribed by the Board, and
 - (ii) in any other case, prescribed by regulations made by the Lieutenant-Governor in Council;
- (m) "share" means, with respect to an interest, an undivided share in the interest or a share in the interest held in accordance with section 65;
- (n) "significant discovery" means a discovery indicated by the first well on a geological feature that demonstrates by flow testing the existence of hydrocarbons in that feature and, having regard to geological and engineering factors, suggests the existence of an accumulation of hydrocarbons that has potential for sustained production; and
- (o) "significant discovery area" means, in relation to a declaration of significant discovery made pursuant to subsection (1) or (2) of section 70, those portions of the offshore area described in the declaration.

(2) Nothing in this Part shall be construed so as to abrogate or derogate from any existing aboriginal and treaty rights of the aboriginal peoples of Canada under section 35 of the Constitution Act, 1982.

DIVISION I

GENERAL

Manner of Giving Notices

Giving
 notice

48. Where a notice is required to be given under this Part or the regulations, it shall be given in such form and manner as may be prescribed and shall contain such information as may be prescribed.

Her Majesty

Binding on
 Her Majesty

49. This Part is binding on Her Majesty in right of Canada or the province.

Designations and Appointments

Delegation

50. The Board may designate any person to exercise the powers and perform the duties and functions under this Part that are specified in the designation and on such designation that person may exercise those powers and shall perform those duties and functions subject to such terms and conditions, if any, as are specified in the designation.

Advisory
 bodies

51.(1) The Board may from time to time appoint and fix the terms of reference of such advisory bodies as the Board considers appropriate to advise the Board with respect to such matters relating to the administration or operation of this Part or Part III as are referred to them by the Board.

(2) The members of any advisory body appointed under subsection (1) may be paid for their services such remuneration as the Board may determine.

ation and expenses as are fixed by the Board.

Representatives

52.(1) Where an interest owner consists of two or more holders, such holders shall, in the manner prescribed, appoint one of their number to act as representative of the interest owner for the purposes of this Part, but such holders may, with the consent of the Board, appoint different representatives for different purposes.

(2) In the event that an interest owner consisting of two or more holders fails to appoint a representative for any of the purposes of this Part, the Board may designate one of such holders as the representative of the interest owner for such purposes.

(3) An interest owner is bound by the acts or omissions of the appointed or designated representative of such interest owner with respect to any matter to which the authority of the representative extends.

(4) A representative of an interest owner appointed or designated under this section shall perform the duties in respect of the purposes for which the representative has been appointed or designated, and any operating agreement or other similar arrangement in force in respect of the relevant interest of that interest owner stands varied or amended to the extent necessary to give effect to this subsection.

General Rules Respecting Interests

No issuance of interests
 of certain 53.(1) Subject to sections 31 to 40, the Board may, except in a case referred to in subsection (2), by order,

lands for such purposes and under such conditions as may be set out in the order, prohibit the issuance of interests in respect of such portions of the offshore area as are specified in the order.

(2) The Federal Minister may, by order, in the case of a disagreement with any government concerning the location of an international boundary and under such conditions as may be set out in the order, prohibit the issuance of interests in respect of such portions of the offshore area as are specified in the order.

Surrender of interests 54.(1) An interest owner may, in the manner prescribed and subject to any requirements that may be prescribed respecting the minimum geographical area to which an interest may relate, surrender an interest in respect of all or any portion of the offshore area subject to the interest.

(2) Any liability of an interest owner or interest holder to Her Majesty in right of Canada or in right of the province, either direct or by way of indemnity, that exists at the time of any surrender under subsection (1) is not affected by the surrender.

Orders to prohibit certain activities 55.(1) Subject to subsection (2), the Board may, in the case of

- (a) an environmental or social problem of a serious nature; or
- (b) dangerous or extreme weather conditions affecting the health or safety of people or the safety of equipment,

by order, prohibit any interest owner specified in the order from commencing or

continuing any work or activity on the portions of the offshore area or any part thereof that are subject to the interest of that interest owner.

(2) An order of the Board made in a case referred to in paragraph (a) of subsection (1) is subject to sections 31 to 40.

(3) The Federal Minister may, in the case of a disagreement with any government concerning the location of an international boundary, by order, prohibit any interest owner specified in the order from commencing or continuing any work or activity on the portions of the offshore area or any part thereof that are subject to the interest of that interest owner.

(4) Where, by reason of an order made under subsection (1) or (3), any requirement in relation to an interest cannot be complied with while the order is in force, compliance with the requirement is suspended until the order is revoked.

(5) Notwithstanding any other provision in this Act, the term of an interest that is subject to an order under subsection (1) or (3) and the period provided for compliance with any requirement in relation to the interest are extended for a period equal to the period that the order is in force.

(6) Nothing in this section affects the authority of the Board to relieve a person from any requirement in relation to an interest or under this Part or the regulations.

DIVISION II

GENERAL RULES RELATING TO
ISSUANCE OF INTERESTS

Authority to Issue Interests

Authority
to issue
interests

56.(1) The Board may issue interests in respect of any portion of the offshore area in accordance with this Part and the regulations.

(2) The issuance of an interest by the Board is subject to sections 31 to 40 unless the issuance of the interest is mandatory under another provision of this Part.

(3) Subject to subsection (4), the application of any interest may be restricted to such geological formations and to such substances as may be specified in the interest.

(4) Subsection (3) does not apply to any interest

(a) that is in force or in respect of which negotiations were completed before or on the coming into force of this section in relation to any portion of the offshore area; or

(b) that immediately succeeds an interest referred to in paragraph (a) in relation to that portion of the offshore area where that portion was not a Crown reserve area on the expiration of the interest referred to in paragraph (a).

Issuance of Interests in Relation
to Crown Reserve Areas

Call for
bids

57.(1) Subject to section 60, the Board shall not issue an interest in relation to Crown reserve areas unless

- (a) prior thereto, the Board has made a call for bids in relation to those Crown reserve areas by publishing a notice in accordance with this section and section 62; and
- (b) the interest is issued to the person who submitted, in response to the call, the bid selected by the Board in accordance with subsection (1) of section 58.

(2) The making of a call for bids by the Board is subject to sections 31 to 40.

(3) Any request received by the Board to make a call for bids in relation to particular portions of the offshore area shall be considered by the Board in selecting the portions of the offshore area to be specified in a call for bids.

(4) A call for bids shall specify

- (a) the interest to be issued and the portions of the offshore area to which the interest is to apply;
- (b) where applicable, the geological formations and substances to which the interest is to apply;

- (c) the other terms and conditions subject to which the interest is to be issued;
- (d) any terms and conditions that a bid must satisfy to be considered by the Board;
- (e) the form and manner in which a bid is to be submitted;
- (f) subject to subsection (5), the closing date for the submission of bids; and
- (g) the sole criterion that the Board will apply in assessing bids submitted in response to the call.

(5) Unless otherwise prescribed, a call for bids shall be published at least one hundred and twenty days before the closing date for the submission of bids specified in the call.

Selection of
bids and
publication

58.(1) A bid submitted in response to a call for bids shall not be selected unless

- (a) the bid satisfies the terms and conditions and is submitted in the form and manner specified in the call; and
- (b) the selection is made on the basis of the criterion specified in the call.

(2) Where the Board selects a bid submitted in response to a call for bids, the Board shall publish a notice in accordance with section 62 setting out the terms and conditions of that bid.

(3) Where an interest is to be issued as a result of a call for bids, the terms and conditions of the interest shall be substantially consistent with any terms and conditions in respect of the interest specified in the call.

(4) The Board shall publish a notice in accordance with section 62 setting out the terms and conditions of any interest issued as a result of a call for bids as soon as practicable after the issuance thereof.

Issuance of
interest not
required

59.(1) The Board is not required to issue an interest as a result of a call for bids.

(2) Subject to section 60, where the Board has not issued an interest with respect to a particular portion of the offshore area specified in a call for bids within six months after the closing date specified in the call for the submission of bids, the Board shall, before issuing an interest in relation to that portion of the offshore area, make a new call for bids.

Exception
to call
for bids

60.(1) Subject to sections 31 to 40, the Board may issue an interest, in relation to any Crown reserve area, without making a call for bids where

- (a) the portion of the offshore area to which the interest is to apply has, through error or inadvertence, become a Crown reserve area and the interest owner who last held an interest in relation to such portion of the offshore area has, within one year after the time they so became a Crown reserve area,

requested the Board to issue an interest; or

- (b) the Board is issuing the interest to an interest owner in exchange for the surrender by the interest owner, at the request of the Board, of any other interest or a share in any other interest, in relation to all or any portion of the offshore area subject to that other interest.

(2) Where the Board proposes to issue an interest under subsection (1), the Board shall, not later than ninety days before issuing the interest, publish a notice in accordance with section 62 setting out the terms and conditions of the proposed interest.

Interest not
vitiating

61. Where an interest has been issued, it is not vitiating by reason only of a failure to comply with any of the requirements set out in sections 57 to 60 respecting the form and content of, and time and manner of publishing, any notice required by those sections in relation to that interest.

Manner of
publication
of notices

62. Any notice required to be published by the Board pursuant to subsection (1) of section 57, subsection (2) or (4) of section 58, subsection (2) of section 60 or subsection (2) of section 67 shall be published in the Gazette and in any other publication the Board deems appropriate and, notwithstanding those subsections, may contain only a summary of the information required to be published and a statement that the full text thereof is available for inspection by any person on request made to the Board.

Regulations

63. Subject to section 7, the Lieutenant-Governor in Council may, for the purposes of section 57, make regulations of general application in relation to the offshore area or any portion thereof, or in respect of any particular call for bids, prescribing the terms, conditions and criterion to be specified in a call for bids, the manner in which bids are to be submitted and requiring those terms and conditions and that criterion and manner to be specified in the call.

DIVISION III

EXPLORATION

Exploration Licences

Rights under
exploration
licences

64. An exploration licence confers, with respect to the portions of the offshore area to which the licence applies,

- (a) the right to explore for, and the exclusive right to drill and test for, petroleum;
- (b) the exclusive right to develop those portions of the offshore area in order to produce petroleum; and
- (c) the exclusive right, subject to compliance with the other provisions of this Part, to obtain a production licence.

Shares

65. A share in an exploration licence may, subject to any requirements that may be prescribed, be held with respect to a portion only of the offshore area subject to the exploration licence.

Terms,
conditions
& regulat-
ions there-
of

66.(1) An exploration licence shall contain such terms and conditions as may be prescribed and may contain any other terms and conditions, not inconsistent with this Part or the regulations, as may be agreed on by the Board, subject to sections 31 to 40, and the interest owner of the licence.

(2) Subject to section 7, the Lieutenant-Governor in Council may make regulations prescribing terms and conditions required to be included in exploration licences issued in relation to the offshore area or any portion thereof.

Amendment
& consoli-
dation of
exploration
licence

67.(1) The Board, subject to sections 31 to 40, and the interest owner of an exploration licence may, by agreement, amend any provision of the exploration licence in any manner not inconsistent with this Part or the regulations and, without limiting the generality of the foregoing, may, subject to subsection (2), amend the licence to include any other portions of the offshore area.

(2) The Board shall not amend an exploration licence to include any portion of the offshore area that, immediately prior to the inclusion, were Crown reserve areas unless the Board would be able to issue an interest to that interest owner in relation to that area under subsection (1) of section 60 and a notice has been published in accordance with section 62 not later than ninety days before making the amendment, setting out the terms and conditions of the amendment.

(3) Subject to sections 31 to 40, the Board may, on the application of the interest owners of two or more exploration licences, consolidate those explorat-

ion licences into a single exploration licence, subject to any terms and conditions that may be agreed on by the Board and those interest owners.

Effective
date of
exploration
licence

68.(1) The effective date of an exploration licence is the date specified in the licence as the effective date thereof.

(2) Subject to subsection (3) and section 69, the term of an exploration licence shall not exceed nine years from the effective date of the licence and shall not be extended or renewed.

(3) Subject to section 69, the term of an exploration licence entered into or in respect of which negotiations have been completed before December 20, 1985 may be renegotiated once only for a further term not exceeding four years and thereafter the term thereof shall not be renegotiated, extended or renewed.

(4) On the expiration of an exploration licence, the portions of the offshore area to which the exploration licence related and that are not subject to a production licence or a significant discovery licence become Crown reserve areas.

Continuation
of explor-
ation lic-
ence where
drilling
commenced

69.(1) Where, prior to the expiration of the term of an exploration licence, the drilling of any well has been commenced on any portion of the offshore area to which the exploration licence applies, the exploration licence continues in force while the drilling of that well is being pursued diligently and for so long thereafter as may be necessary to determine the existence of a significant discovery based on the results of that well.

(2) Where the drilling of a well referred to in subsection (1) is suspended by reason of dangerous or extreme weather conditions or mechanical or other technical problems encountered in the drilling of the well, the drilling of that well shall, for the purposes of subsection (1), be deemed to be being pursued diligently during the period of suspension.

(3) Where the drilling of a well referred to in subsection (1) cannot be completed for mechanical or other technical problems and if, within ninety days after the cessation of drilling operations with respect to that well, or such longer period as the Board determines, the drilling of another well is commenced on any portion of the offshore area that was subject to the exploration licence, the drilling of that other well shall, for the purposes of subsection (1), be deemed to have commenced prior to the expiration of the term of the exploration licence.

Significant Discoveries

Declaration
of signifi-
cant dis-
covery

70.(1) Subject to section 119, where a significant discovery has been made on any portion of the offshore area that is subject to an interest or a share therein held in accordance with section 65, the Board shall, on the application of the interest holder of the interest or the share thereof made in the form and manner and containing such information as may be prescribed, make a written declaration of significant discovery in relation to those portions of the offshore area in respect of which there are reasonable grounds to believe that the significant discovery may extend.

(2) Where a significant discovery has been made on any portion of the offshore area, the Board may, by order subject to section 119, make a declaration of significant discovery in relation to those portions of the offshore area in respect of which there are reasonable grounds to believe the significant discovery may extend.

(3) A declaration made pursuant to subsection (1) or (2) shall describe the portions of the offshore area to which the declaration applies.

(4) Where a declaration of significant discovery is made pursuant to subsection (1) or (2) and, based on the results of further drilling, there are reasonable grounds to believe that a discovery is not a significant discovery or that the portions of the offshore area to which the significant discovery extends differ from the significant discovery area, the Board may, subject to section 119 and as appropriate in the circumstances,

- (a) amend the declaration of significant discovery by increasing or decreasing the significant discovery area; or
- (b) revoke the declaration.

(5) A copy of a declaration of significant discovery and of any amendment or revocation thereof made under this section in relation to any portion of the offshore area subject to an interest shall be sent by registered mail to the interest owner of that interest.

Significant Discovery Licences

Rights under significant discovery licence

71. A significant discovery licence confers, with respect to the portions of the offshore area to which the licence applies,

- (a) the right to explore for, and the exclusive right to drill and test for, petroleum;
- (b) the exclusive right to develop those portions of the offshore area in order to produce petroleum; and
- (c) the exclusive right, subject to compliance with the other provisions of this Part, to obtain a production licence.

Significant discovery licence in relation to lands subject to exploration licences

72.(1) Where a declaration of significant discovery is in force and all or a portion of the significant discovery area is subject to an exploration licence or a share therein held in accordance with section 65, the Board shall, on application of the interest holder of the exploration licence or the share made in the form and manner and containing such information as may be prescribed, issue to the interest holder a significant discovery licence in respect of all portions of the significant discovery area that are subject to the exploration licence or the share.

(2) Where a declaration of significant discovery is in force and the significant discovery area extends to a Crown reserve area, the Board may, after making a call for bids in relation to that Crown reserve area or any portion thereof and selecting a bid submitted in response to the call in accordance with

subsection (1) of section 58, issue a significant discovery licence to the person who submitted that bid in relation to the Crown reserve area specified in the call.

(3) The making of a call for bids and the issuance of a significant discovery licence by the Board pursuant to subsection (2) is subject to sections 31 to 40.

(4) A significant discovery licence shall be in the form prescribed and may contain any other terms and conditions, not inconsistent with this Part or the regulations, as may be agreed on by the Board, subject to sections 31 to 40, and the interest owner of the significant discovery licence.

Reduction
 or increase
 of area
 subject to
 significant
 discovery
 licence

73.(1) Where a significant discovery area in relation to a declaration of significant discovery is decreased pursuant to an amendment made under subsection (4) of section 70, any significant discovery licence that was issued on the basis of that declaration shall be amended by decreasing accordingly the portions of the offshore area subject to that licence.

(2) Where a significant discovery area in relation to a declaration of significant discovery is increased pursuant to an amendment made under subsection (4) of section 70, any significant discovery licence that was issued on the basis of that declaration shall be amended to include all portions of the amended significant discovery area that are subject to any exploration licence held by the interest owner of that significant discovery licence at the time the significant discovery area is so increased.

Term of
licences

74.(1) On the issuance of a significant discovery licence pursuant to subsection (1) of section 72 with respect to a significant discovery area, any exploration licence ceases to have effect in relation to that significant discovery area.

(2) The effective date of a significant discovery licence is the date of application for the licence.

(3) Subject to subsection (1) of section 84, a significant discovery licence continues in force, in relation to each portion of the offshore area to which the licence applies, during such period as the declaration of significant discovery on the basis of which the licence was issued remains in force in relation to that portion.

(4) On the expiration of a significant discovery licence, any portion of the offshore area to which the significant discovery licence related and that is not subject to a production licence becomes a Crown reserve area.

Drilling Orders

Drilling
orders

75.(1) Subject to subsections (2) to (4) and sections 31 to 40, the Board may, at any time after making a declaration of significant discovery, by order subject to section 119, require the interest owner of any interest in relation to any portion of the significant discovery area to drill a well on any portion of the significant discovery area that is subject to that interest, in accordance with such directions as may be set out in the order, and to commence the drilling within one year after the making of the

order or within such longer period as the Board specifies in the order.

(2) No order may be made under subsection (1) with respect to any interest owner who has completed a well on the relevant portion of the offshore area within six months prior to the making of the order.

(3) No order may be made under subsection (1) within the three years immediately following the well termination date of the well indicating the relevant significant discovery.

(4) No order made under subsection (1) may require an interest owner to drill more than one well at a time on the relevant portion of the offshore area.

(5) For the purposes of subsection (3), "well termination date" means the date on which a well has been abandoned, completed or suspended in accordance with any applicable drilling regulations.

Information
may be dis-
closed

76.(1) The Board may, notwithstanding section 114, provide information or documentation relating to a significant discovery to any interest owner who requires such information or documentation to assist the interest owner in complying with an order made under subsection (1) of section 75.

(2) An interest owner shall not disclose any information or documentation provided to that interest owner under subsection (1) except to the extent necessary to enable the interest owner to comply with an order made under subsection (1) of section 75.

DIVISION IV

PRODUCTION

Commercial Discoveries

Application
for declara-
tion of
commercial
discovery

77.(1) Subject to section 119, where a commercial discovery has been made on any portion of the offshore area that is subject to an interest or a share therein held in accordance with section 65, the Board shall, on the application of the interest holder of the interest or the share, made in the form and manner, and containing such information as may be prescribed, make a written declaration of commercial discovery in relation to those portions of the offshore area in respect of which there are reasonable grounds to believe that the commercial discovery may extend.

(2) Subject to section 119, where a commercial discovery has been made on any portion of the offshore area, the Board may, by order, make a declaration of commercial discovery in relation to those portions of the offshore area in respect of which there are reasonable grounds to believe that the commercial discovery may extend.

(3) Subsections (3), (4) and (5) of section 70 apply, with such modifications as the circumstances require, with respect to a declaration made pursuant to subsection (1) or (2).

Development Orders

Order to
reduce
term of
interest

78.(1) Subject to sections 31 to 40, the Board may, at any time after making a declaration of commercial discovery, give notice to the interest owner of any interest in relation to any port-

ion of the commercial discovery area where commercial production of petroleum has not commenced before that time stating that, after such period of not less than six months as may be specified in the notice, an order may be made reducing the term of that interest.

(2) During the period specified in a notice sent to an interest owner under subsection (1), the Board shall provide a reasonable opportunity for the interest owner to make such submissions as the interest owner considers relevant to determining whether the Board should make an order reducing the term of the relevant interest.

(3) Notwithstanding any other provision of this Act but subject to sections 31 to 40, where the Board is of the opinion that it is in the public interest, the Board may, at any time not later than six months after the expiration of the period specified in a notice in respect of an interest sent under subsection (1), by order subject to section 119, reduce the term of the interest to three years after the date the order is made or such longer period as may be specified in the order.

(4) Notwithstanding any other provision of this Act but subject to subsections (5) and (6), where an order is made under subsection (3), any interest in respect of a portion of the offshore area within the area to which the interest that is the subject of the order applied on the date the order was made ceases to have effect at the end of the period specified in the order.

(5) Where commercial production of petroleum on any portion of the offshore

area referred to in subsection (4) commences before the expiration of the period specified in an order made under subsection (3) or the period extended pursuant to subsection (6), the order ceases to have effect and is deemed to have been vacated.

(6) Subject to sections 31 to 40, the Board may extend the period specified in an order made under subsection (3) or may revoke the order.

Issuance of Production Licences

Rights under
production
licence

79.(1) A production licence confers, with respect to the portions of the offshore area to which the licence applies,

- (a) the exclusive right to develop those portions of the offshore area in order to produce petroleum;
- (b) the exclusive right to produce petroleum from those portions of the offshore area; and
- (c) title to the petroleum so produced.

(2) Notwithstanding subsection (1), the Board may, subject to such terms and conditions as the Board deems appropriate, authorize any interest holder of an interest or a share therein to produce petroleum on the portions of the offshore area subject to the interest or share for use in the exploration or drilling for or development of petroleum on any portion of the offshore area.

Issuance of
production

80.(1) Subject to sections 86 and 88, the Board, on application made in the

licence form and manner and containing such information as may be prescribed,

(a) shall issue a production licence to one interest owner, in respect of any one commercial discovery area or portion thereof that is subject to an exploration licence or a significant discovery licence held by that interest owner; and

(b) may, subject to such terms and conditions as may be agreed on by the Board and the relevant interest owners and to sections 31 to 40, issue a production licence to

(i) one interest owner, in respect of two or more commercial discovery areas or portions thereof that are subject to an exploration licence or a significant discovery licence held by that interest owner, or

(ii) two or more interest owners, in respect of one or more commercial discovery areas or portions thereof that are subject to an exploration licence or a significant discovery licence held by any of those interest owners.

(2) Where a declaration of commercial discovery is in force and the commercial discovery area extends to a Crown reserve area, the Board may, after making a call for bids in relation to that Crown reserve area or any portion

thereof and selecting a bid submitted in response to the call in accordance with subsection (1) of section 58, issue a production licence to the person who submitted that bid in relation to the Crown reserve area specified in the call.

(3) The making of a call for bids and the issuance of a production licence by the Board pursuant to subsection (2) is subject to sections 31 to 40.

(4) A production licence shall be in the form prescribed and may contain any terms and conditions, not inconsistent with this Part or the regulations, as may be agreed on by the Board, subject to sections 31 to 40, and the interest owner of the production licence.

Consolidation of production licences

81. Subject to sections 31 to 40, the Board may, on the application of the interest owners of two or more production licences, consolidate those production licences into a single production licence, on such terms and conditions as may be agreed on by the Board and those interest owners.

Reduction and increase of area subject to production licence

82.(1) Where a commercial discovery area in relation to a declaration of commercial discovery is decreased pursuant to an amendment made under subsection (4) of section 70 and subsection (3) of section 77, any production licence that was issued on the basis of that declaration shall be amended by decreasing accordingly the portions of the offshore area subject to that licence.

(2) Where a commercial discovery area in relation to a declaration of commercial discovery is increased pursuant to an amendment made under subsection

(4) of section 70 and subsection (3) of section 77, any production licence that was issued on the basis of that declaration shall be amended to include all portions of the amended commercial discovery area that are subject to an exploration licence or a significant discovery licence held by the interest owner of that production licence at the time the commercial discovery area is so increased.

Term of
production
licence

83.(1) Subject to subsections (2) to (4), a production licence is effective from the date it is issued and shall be issued for a term of twenty-five years.

(2) Where a declaration of commercial discovery on the basis of which a production licence was issued is, pursuant to subsection (4) of section 70 and subsection (3) of section 77, revoked or amended to exclude all portions of the commercial discovery area in relation to which the production licence was issued, the production licence ceases to be in force.

(3) Where, on the expiration of the term of a production licence, petroleum is being produced commercially, the term is extended for such period thereafter during which commercial production of petroleum continues.

(4) Subject to sections 31 to 40, the Board may, by order, on such terms and conditions as may be specified in the order, extend the term of a production licence where

(a) commercial production of petroleum from the portions of the offshore area subject to the licence ceases before or on the

expiration of the twenty-five year term of the production licence and the Board has reasonable grounds to believe that commercial production from such portions of the offshore area will recommence; or

- (b) the Board has reasonable grounds to believe that commercial production of petroleum from such portions of the offshore area will, at any time before or after the expiration of the term of the licence, cease during any period and thereafter recommence.

Lapsing of
other
interests

84.(1) On the issuance of a production licence, any interest in relation to the portions of the offshore area in respect of which the production licence is issued held immediately prior to the issuance of the production licence ceases to have effect in relation to such portions of the offshore area, but otherwise continues to have effect according to its terms and the provisions of this Act.

(2) On the expiration of a production licence, the portions of the offshore area in relation to which the production licence was issued become Crown reserve areas.

Subsurface Storage Licences

Licence for
subsurface
storage

85.(1) The Board may, subject to any terms and conditions the Board considers appropriate, issue a licence for the purpose of subsurface storage of petroleum or any other substance approved by the Board in portions of the offshore area at depths greater than twenty metres.

(2) No portion of the offshore area shall be used for a purpose referred to in subsection (1) without a licence referred to therein.

Qualifications for Production
Licence

Qualifica-
tions for
production
licence

86.(1) No production licence or share in a production licence may be held by any person unless that person is

- (a) a Canadian citizen ordinarily resident in Canada or a permanent resident within the meaning of the Immigration Act, 1976 (Canada), other than a person who has been ordinarily resident in Canada for more than one year after the time at which the person first became eligible to apply for Canadian citizenship; or
- (b) a corporation incorporated in Canada.

(2) A permanent resident within the meaning of the Immigration Act, 1976 (Canada) who, but for this subsection, would be excluded under paragraph (a) of subsection (1) shall not be excluded on the grounds set out in that paragraph until after March 5, 1987 or such other date as may be prescribed, and shall be deemed, until that date, to be a permanent resident who satisfies the qualifications set out in that paragraph.

DIVISION V

CANADIAN OWNERSHIP

Definition

87. In this Division, "Canadian ownership rate" means a level of Canadian

ownership as determined under this Division in accordance with the regulations made thereunder or any rules or regulations referred to therein.

Required
Canadian
ownership
rate of
production
licence

88. Subject to sections 90 and 95, no production licence shall be issued unless the Federal Minister is satisfied that the Canadian ownership rate of the interest owner in relation to the production licence, on the date of the issuance of the production licence, would be not less than fifty per cent.

Plan for
attainment
of Canadian
ownership
rate

89.(1) Subject to subsection (2), where an application for the approval of a development plan is submitted by any person in relation to any portion of the offshore area under Part III and a production licence has not previously been issued in relation to that portion of the offshore area, that person shall submit, together with that application or as soon as possible after the submission of the application, a plan satisfactory to the Federal Minister providing for the attainment, by reasonable commercial means, of the Canadian ownership rate required by section 88 in relation to the production licence that may be issued in respect of that portion of the offshore area.

(2) A person submitting a development plan in relation to any portion of the offshore area is not required to comply with subsection (1) where that person establishes to the satisfaction of the Federal Minister that the Canadian ownership rate of the proposed interest owner in relation to the production licence that may be issued in respect of that portion of the offshore area would be not less than fifty per cent.

Alternate
requirements

90. Where a person

- (a) is exempted by subsection (2) of section 89 from the submission of a plan pursuant to subsection (1) of section 89, or
- (b) has submitted a plan pursuant to subsection (1) of section 89 and, in the opinion of the Federal Minister, diligently followed that plan

and the Canadian ownership rate required by section 88 has not been attained at the time that person applies for a production licence, the Federal Minister may waive the requirement set out in section 88 and issue the production licence, subject to such terms and conditions respecting attempts to have the interest owner of the production licence attain a Canadian ownership rate of not less than fifty per cent in relation to the production licence as the Federal Minister may determine, or subject to the requirements set out in section 91.

Sale by
public
tender

91.(1) Where a production licence is issued under section 90 subject to the requirements set out in this section, a share in the production licence equal to that share that, if acquired by a person having a Canadian ownership rate equal to seventy-five per cent, would be sufficient to raise the Canadian ownership rate of the interest owner in relation to the production licence to fifty per cent, shall be offered for sale by public tender in the manner prescribed.

(2) Where a public tender is conducted pursuant to subsection (1), the invitation to tender shall specify

- (a) a closing date for the submission of tenders that is not later than six months after the date on which the production licence is issued;
- (b) the qualifications, determined by the Federal Minister, for eligibility to purchase the share;
- (c) the terms and conditions of sale; and
- (d) any other matter or thing that is relevant to the sale.

(3) No share in a production licence shall be sold at a sale by public tender conducted pursuant to subsection (1)

- (a) at a price that is less than an amount equal to the fair market value of the share, determined in the manner prescribed; or
- (b) to a person, other than a person who possesses the qualifications specified in the invitation to tender.

(4) Where a person purchases a share in a production licence at a sale by public tender conducted pursuant to subsection (1), the sale is not vitiated by reason only of the erroneous determination of the qualifications of that person for eligibility to purchase the share.

Option to
designated
Crown
corporation

92.(1) Where a share offered for sale by public tender pursuant to subsection (1) of section 91 is not purchased at the sale, a company or other body

corporate that is an agent of Her Majesty in right of the province and is designated by the Provincial Minister for the purposes of this section has the option to purchase the share in accordance with subsection (2) at a price equal to the amount referred to in paragraph (a) of subsection (3) of section 91.

(2) Where the option referred to in subsection (1) is exercised, it shall be exercised in the manner prescribed and expires sixty days after the closing date for the submission of tenders specified in the invitation to tender.

(3) Where an option referred to in subsection (1) is not exercised in accordance with subsection (2), a company or other body corporate that is an agent of Her Majesty in right of Canada and is designated by the Federal Minister for the purposes of this section has the option to purchase the share in accordance with subsection (4) at a price equal to the amount referred to in paragraph (a) of subsection (3) of section 91.

(4) Where the option referred to in subsection (3) is exercised, it shall be exercised in the manner prescribed and expires sixty days after the expiration of the sixty days referred to in subsection (2).

(5) Where a share in a production licence is sold as a result of a public tender conducted pursuant to subsection (1) of section 91 or the exercise of an option under subsection (1) or (3), the interest owner of the production licence shall transfer the share to the purchaser at the time and in the manner prescribed.

(6) Subject to subsection (7), where the interest owner of a production licence consists of two or more holders, a share in the production licence sold as a result of a public tender conducted pursuant to subsection (1) of section 91 or the exercise of an option under subsection (1) or (3) shall be transferred to the purchaser by such holders in the proportions agreed on by the holders or, in the absence of agreement, in the proportions determined in the manner prescribed.

(7) No holder of a share in a production licence shall be required to transfer any portion of a share under subsection (6) where the Canadian ownership rate of that holder in relation to that share is fifty per cent or greater.

Regulations

93. The Governor General in Council may make regulations for carrying out the purposes and provisions of this Division and, without restricting the generality of the foregoing, may make regulations

- (a) defining, for the purposes of this Division,
 - (i) "interest holder" to include, in respect of an interest or a share therein, the beneficial owner of the interest or share, and
 - (ii) the expression "beneficial owner";
- (b) respecting the calculation or determination of beneficial ownership in relation to an interest or share;

- (c) respecting the calculation or determination of the level of Canadian ownership of any person or entity or class of persons or entities, the authorization of the Federal Minister to make any calculation or determination necessary for those purposes and the manner in which any such calculation or determination shall be made; and
- (d) prescribing any other matter or thing that is by this Division to be prescribed.

Canadian
ownership
rate where
more than
one holder

94.(1) Where an interest owner of a production licence consists of two or more holders, the Canadian ownership rate of such interest owner is the sum of the products obtained by multiplying the Canadian ownership rate of each such holder by its share in the production licence.

(2) In the absence of regulations made under paragraph (c) of section 93, a Canadian ownership rate shall be calculated or determined in accordance with the Canadian Ownership and Control Determination Act and the regulations made under that Act.

(3) Where it appears to the Federal Minister that a matter relating to a Canadian ownership rate cannot reasonably be determined by applying the rules set out in this Division or the applicable regulations in any case or class of cases, the Federal Minister may make the determination or authorize it to be made in accordance with such criteria as the Federal Minister considers appropriate.

Exception

95.(1) This Division, except subsection (2), does not apply in respect of any production licence that may be issued in relation to a commercial discovery area on which the drilling of the first well that indicated the discovery commenced before March 5, 1982.

(2) No production licence shall be issued to a corporation in relation to a commercial discovery area on which the drilling of the first well that indicated the discovery commenced before March 5, 1982 unless the Federal Minister is satisfied that the requirements set out in subparagraph (i), (ii) or (iii) of subparagraph (c) of subsection (2) of section 54 of the Canada Oil and Gas Land Regulations have been met in respect of that corporation.

DIVISION VI

Environmental Studies Research
Fund

Fund
continued
& rates
approved
by Board

96.(1) Section 49 of the Canada Oil and Gas Act applies, with such modifications as the circumstances require within the offshore area.

(2) The rates fixed by the Federal Minister pursuant to section 49 of the Canada Oil and Gas Act, as they apply to the offshore area, are subject to approval by the Board.

DIVISION VII

TRANSFERS, ASSIGNMENTS AND
REGISTRATION

Interpretation

Definitions

97.(1) In this Division,

- (a) "assignment of security interest" means a notice of the assignment of a security interest or any part thereof in respect of which a security notice has been registered under this Division;
- (b) "Court" means the Trial Division of the Supreme Court of Newfoundland and includes a judge thereof;
- (c) "dependent right" means any prescribed right or class of rights in relation to an interest or a share in an interest, but does not include a security interest or an operator's lien;
- (d) "Deputy Registrar" means such person as the Board may designate as the Deputy Registrar for the purposes of this Division;
- (e) "discharge" means a notice of the discharge of a security notice or postponement and includes a partial discharge;
- (f) "instrument" means a discharge, postponement, security notice, transfer or an assignment of a security interest;
- (g) "operator's lien" means any charge on or right in relation to an interest or a share in an interest

- (i) that arises under a contract
 - (A) to which the interest owner or holder of the interest or share is a party,
 - (B) that provides for the operator appointed thereunder to carry out any work or activity related to the exploration for or the development or production of petroleum in the portions of the offshore area to which the interest or share applies, and
 - (C) that requires the interest owner or holder to make payments to the operator to cover all or part of the advances made by the operator in respect of the costs and expenses of such work or activity, and
- (ii) that secures the payments referred to in subparagraph (C) of paragraph (i);
- (h) "postponement" means a document evidencing the postponement of a security notice or operator's lien;

- (i) "Registrar" means such person as the Board may designate as the Registrar for the purposes of this Division;
- (j) "secured party" means the person claiming a security interest under a security notice;
- (k) "security interest" means any charge on or right in relation to an interest or a share in an interest that secures
 - (i) the payment of an indebtedness arising from an existing or future loan or advance of money,
 - (ii) a bond, debenture or other security of a corporation, or
 - (iii) the performance of the obligations of a guarantor under a guarantee given in respect of all or any part of an indebtedness referred to in subparagraph (i) or all or any part of a bond, debenture or other security of a corporation,and includes a security given under section 177 of the Bank Act, but does not include a dependent right or an operator's lien;
- (l) "security notice" means a notice of a security interest; and

(m) "transfer" means a transfer of an interest or a share in an interest.

(2) Where an assignment of security interest is registered under this Division, a reference in this Division to a secured party shall, in respect of the security notice to which the assignment of a security interest relates, be read as a reference to the assignee named in the assignment of security interest.

Transfer and Assignment

Notice of
 disposition
 of any
 interest

98. Where an interest holder of an interest or any share therein enters into an agreement or arrangement that is or may result in a transfer, assignment or other disposition of the interest or any share therein, the interest holder shall give notice of such agreement or arrangement to the Board, together with a copy of the agreement or arrangement or, if the Board approves, a summary of its terms and conditions.

Disposition
 of production
 licences
 requires
 approval

99.(1) Subject to subsection (4), any agreement or arrangement that is or may result in a transfer, assignment or other disposition of a production licence or any share therein is of no force or effect with respect to such transfer, assignment or other disposition unless it is approved by the Federal Minister pursuant to subparagraph (ii) of paragraph (a) of subsection (3) or paragraph (b) of subsection (3).

(2) Where the Board is notified of an agreement or arrangement referred to in subsection (1), the Board shall notify the Federal Minister of the agreement or arrangement.

(3) Where the Federal Minister is notified of an agreement or arrangement in relation to any production licence pursuant to subsection (2), the Federal Minister may,

(a) where the transferee or assignee would not possess the qualifications for a production licence set out in section 86 or on any grounds relating to the Canadian ownership rate in respect of the production licence, by order subject to section 119,

(i) disapprove the agreement or arrangement, or

(ii) approve the agreement or arrangement, subject to such terms and conditions as may be considered by the Federal Minister to be appropriate in the circumstances or as may be prescribed relating to the Canadian ownership rate in respect of the production licence; or

(b) in any other case, approve the agreement or arrangement.

(4) This section does not apply to any agreement or arrangement that is entered into in connection with the realization of security granted for a loan advanced to finance activities in relation to a production licence where the agreement or arrangement granting the security has been approved pursuant to subsection (3).

Registration

Public register 100.(1) A public register of all interests and instruments registered under this Division shall be established and maintained in accordance with this Division and the regulations.

(2) The Registrar and Deputy Registrar shall exercise such powers and perform such duties and functions in respect of the register and the system of registration established under this Division as may be prescribed.

Prohibition 101.(1) No document other than an interest or instrument may be registered under this Division.

(2) No instrument may be registered under this Division unless it has been submitted for registration in the form prescribed for that instrument, in such manner and containing such information as may be prescribed, and meets any other requirement for the registration thereof prescribed by this Division and the regulations.

Prohibition against registration of disapproved transfers 102. No transfer of a production licence or share in a production licence may be registered under this Division unless the agreement or arrangement resulting in the transfer of the production licence has been approved pursuant to subparagraph (ii) of paragraph (a) of subsection (3) of section 99 or paragraph (b) of subsection (3) of section 99 or has been exempted from section 99 by virtue of subsection (4) of section 99.

Requirements of registering security 103.(1) No security notice may be registered under this Division unless the security notice specifies

notice

- (a) the nature of the security interest claimed;
- (b) the person from whom the security interest was acquired;
- (c) the documents giving rise to the security interest; and
- (d) such other particulars in respect thereof as may be prescribed.

(2) No instrument may be registered under this Division unless a notice of official address for service in respect of that instrument is filed with the Registrar in prescribed form.

(3) The official address for service in respect of an instrument may be changed by filing with the Registrar another notice of official address for service, in prescribed form.

Security
notice

104. Where a significant discovery licence or production licence is issued at any time in respect of any portion of the offshore area that was not a Crown reserve area immediately before that time, the registration under this Division of a security notice in respect of the interest in force immediately preceding the issuance of that licence and relating to that portion of the offshore area applies in respect of the licence as though the security notice referred to that licence and as though that licence had been issued prior to the registration of the security notice.

Registration

105.(1) Every document submitted for registration under this Division

shall be examined by the Registrar and where the Registrar determines that the document is an instrument that meets all the requirements for the registration thereof prescribed by this Division and the regulations, the Registrar shall register the instrument in accordance with this Division and the regulations.

(2) Where the Registrar refuses to register any document under this Division, the Registrar shall return the document to the person submitting the document for registration and provide that person with the reasons for the refusal.

(3) An instrument is registered under this Division by the endorsement of a memorandum of registration on the instrument specifying the registration number of the instrument and the time and date of registration.

(4) Instruments accepted for registration under this Division shall be registered in the chronological order in which such instruments are received by the Registrar.

Deemed
notice

106. The registration of an instrument under this Division shall be deemed to constitute actual notice of the instrument to all persons as of the time of registration of the instrument and, in the case of a security notice, shall be deemed to constitute actual notice to all persons who may serve a demand for information under section 65 in respect of the security notice of the contents of the documents specified in the security notice.

Priority
of rights

107.(1) Subject to subsections (2) and (5), any particular right, in relat-

ion to an interest or a share therein, in respect of which an instrument has been registered under this Division at any time has priority over and is valid against any other right, in relation to that interest or share,

(a) in respect of which an instrument may be registered under this Division,

(i) where the instrument was not so registered, or

(ii) where the instrument was so registered after that time,

whether that other right was acquired before or after that particular right; or

(b) in respect of which an instrument may not be registered under this Division, acquired after that time.

(2) Where any right in respect of which an instrument may be registered under this Division was acquired before the coming into force of this section and an instrument in respect of such right is registered under this Division not later than one hundred and eighty days after the coming into force of this section, the priority and validity of such right shall be determined as though the instrument was registered under this Division at the time the right was acquired and as though this section was in force at that time.

(3) Notwithstanding subsection (2), no right in respect of which that subsection applies shall have priority

over and be valid against any other right in respect of which that subsection applies but in respect of which an instrument is not registered within the period referred to in that subsection, where the person claiming the right in respect of which an instrument is registered within that period acquired such right with actual knowledge of the other right.

(4) No instrument in respect of any right to which subsection (2) applies shall be registered unless it is accompanied by the statutory declaration, in prescribed form, of the person claiming such right, attesting to the time at which such right was acquired.

(5) An operator's lien, in relation to an interest or share therein, shall, without registration of any document evidencing the operator's lien, have priority over and be valid against any other right, in relation to that interest or share, in respect of which an instrument may be registered under this Division, whether an instrument in respect of that other right was registered before or after the acquisition of the operator's lien or the operator's lien was acquired before or after that other right, unless the operator's lien is postponed with respect to such other rights by the registration under this Division of a postponement in respect of the operator's lien and a discharge in respect of that postponement has not been registered under this Division.

Demand for
information

108.(1) A person may, in accordance with this section, serve a demand for information in respect of a security notice that has been registered under

this Division in relation to an interest or a share therein where that person

- (a) is the holder of that interest or share;
- (b) is specified in the security notice as the person from whom the security interest was acquired;
- (c) is the secured party under another security notice registered under this Division in relation to that interest or share;
- (d) is a member of a class of persons prescribed by the regulations for the purposes of this subsection; or
- (e) obtains leave to do so from the Court.

(2) A demand for information, in respect of a security notice, may be served pursuant to subsection (1) by serving on the secured party under the security notice a demand notice, in prescribed form, requiring the secured party

- (a) to inform the person serving the demand notice, within fifteen days after service of the notice, of the place where the documents specified in the security notice or copies thereof are located and available for examination, and of the normal business hours during which the examination may be made; and

(b) to make such documents or copies thereof available for examination at that place during normal business hours, by or on behalf of the person serving the notice, within a reasonable period after the demand notice is served.

(3) A demand for information is served for the purposes of this section if it is sent by registered mail or delivered to the official address for service in respect of the security notice according to the records of the Registrar.

(4) A demand for information served pursuant to subsection (1) may be complied with by mailing or delivering to the person serving the demand notice a true copy of the documents referred to in the demand notice.

(5) Where a secured party fails without reasonable excuse to comply with a demand for information in respect of a security notice in relation to an interest or share therein served on the secured party in accordance with this section, the Court may, on application by the person who served the demand notice, make an order requiring the secured party to comply with the demand for information within the time and in the manner specified in the order.

(6) Where a secured party fails to comply with an order of a court made under subsection (5), the Court may, on the application of the person who applied for the order,

(a) make any other order the Court considers necessary to ensure

compliance with the order made under subsection (5); or

- (b) make an order directing the Registrar to cancel the registration of the security notice.

(7) In this section, "document" includes any amendment to the document.

Notice to
take pro-
ceedings

109.(1) A person who may serve a demand for information in respect of a security notice in relation to an interest or a share therein pursuant to subsection (1) of section 65 may

- (a) serve on the secured party under the security notice a notice to take proceedings, in prescribed form, directing that secured party to apply to the Court within sixty days after the day on which the notice to take proceedings is served, for an order substantiating the security interest claimed in the security notice; or
- (b) commence proceedings in the court, requiring the secured party to show cause why the registration of the security notice should not be cancelled.

(2) The Court may, by order, on the ex parte application of a person who proposes to serve a notice to take proceedings under subsection (1), shorten the sixty day period referred to in paragraph (a) of subsection (1) and, if the order is made,

- (a) paragraph (a) of subsection (1) shall, in relation to that notice to take proceedings, be deemed to refer to the shorter period; and
- (b) a certified copy of the order shall be served with that notice to take proceedings.

(3) The Court may, on the application of a secured party served with a notice to take proceedings, extend the period for applying to the Court referred to in paragraph (a) of subsection (1), whether or not that period has been shortened under subsection (2).

(4) A notice to take proceedings is served for the purposes of this section if it is sent by registered mail or delivered to the secured party at the official address for service in respect of the security notice according to the records of the Registrar.

(5) The registration of a security notice shall be cancelled on submission to the Registrar of a statutory declaration showing that

- (a) a notice to take proceedings was served in accordance with this section; and
- (b) no application was commenced in accordance with the notice to take proceedings or within the period extended pursuant to subsection (3) or an application so made was dismissed by the Court or discontinued.

(6) Where the registration of a security notice in respect of a security

interest is cancelled pursuant to subsection (5) or (7), the secured party under the security notice may not submit for registration under this Division another security notice in respect of that security interest without leave of the Court to do so.

(7) The registration of a security notice shall be cancelled where there is submitted to the Registrar a certified copy of an order or judgment of a court directing the Registrar to do so, whether as a result of proceedings taken under this Division or otherwise.

Transfer
effective
on registra-
tion

110. A transfer of an interest or a share therein is not effective against the Crown prior to the registration of the transfer.

No restriction
on rights of
Board or
Her Majesty

111. For greater certainty, the registration of an instrument

(a) does not restrict or in any manner affect any right or power of the Board or of the Ministers under this Part, the regulations or the terms of any interest; and

(b) does not derogate from any proprietary right or any right to dispose of or exploit natural resources that Her Majesty in right of Canada has under this Act in respect of any portion of the offshore area.

No action for
acts done in
performance
of official

112. No action or other proceedings for damages shall be commenced against the Registrar or Deputy Registrar or anyone acting under the authority of the

functions Registrar or Deputy Registrar for an act done or omission in good faith in the exercise of a power or the performance of a duty under this Division.

Regulations 113. Subject to section 7, the Lieutenant-Governor in Council may make regulations for carrying out the purposes and provisions of this Division and, without restricting the generality of the foregoing, may make regulations

- (a) prescribing the powers, duties and functions of the Registrar and Deputy Registrar for the purposes of this Division and the time when, and manner and circumstances in which, they are to be exercised, and providing for the designation by the Board of any person or class of persons to exercise such powers and perform such duties and functions as may be specified in the regulations;
- (b) governing the books, abstracts and indexes to be maintained as the register for the purposes of this Division and the particulars of interests, instruments and portions of the offshore area and the orders and declarations made in relation to interests to be recorded therein;
- (c) governing the filing of copies of interests, registered instruments and other documents in the register established under this Division;
- (d) governing public access to and searches of the register;

- (e) prescribing the dependent rights and classes of dependent rights in respect of which a caution may be registered under this Division;
- (f) prescribing fees for the registration of instruments, making copies and certified copies of documents, searches and any other services specified in the regulations for the purposes of this Division, and requiring such fees to be paid for such services; and
- (g) prescribing any other matter or thing that is by this Division to be prescribed.

DIVISION VIII

ADMINISTRATION AND ENFORCEMENT

Disclosure of Information

Definitions

114.(1) In this section

- (a) "delineation well" means a well that is so located in relation to another well penetrating an accumulation of petroleum that there is a reasonable expectation that another portion of that accumulation will be penetrated by the first-mentioned well and that the drilling is necessary in order to determine the commercial value of the accumulation;
- (b) "development well" means a well that is so located in relation to another well pene-

trating an accumulation of petroleum that it is considered to be a well or part of a well drilled for the purpose of production or observation or for the injection or disposal of fluid into or from the accumulation;

- (c) "engineering research or feasibility study" includes work undertaken to facilitate the design or to analyse the viability of engineering technology, systems or schemes to be used in the exploration for or the development, production or transportation of petroleum in the offshore area;
- (d) "environmental study" means work pertaining to the measurement or statistical evaluation of the physical, chemical and biological elements of the lands, oceans or coastal zones, including winds, waves, tides, currents, precipitation, ice cover and movement, icebergs, pollution effects, flora and fauna both onshore and offshore, human activity and habitation and any related matters;
- (e) "experimental project" means work or activity involving the utilization of methods or equipment that are untried or unproven;
- (f) "exploratory well" means a well drilled on a geological feature on which a significant discovery has not been made;

- (g) "geological work" means work, in the field or laboratory, involving the collection, examination, processing or other analysis of lithological, paleontological or geochemical materials recovered from the seabed or subsoil of any portion of the offshore area and includes the analysis and interpretation of mechanical well logs;
- (h) "geophysical work" means work involving the indirect measurement of the physical properties of rocks in order to determine the depth, thickness, structural configuration or history of deposition thereof and includes the processing, analysis and interpretation of material or data obtained from such work;
- (i) "geotechnical work" means work, in the field or laboratory, undertaken to determine the physical properties of materials recovered from the seabed or subsoil of any portion of the offshore area;
- (j) "well site seabed survey" means a survey pertaining to the nature of the seabed or subsoil of any portion of the offshore area in the area of the proposed drilling site in respect of a well and to the conditions of those portions of the offshore area that may affect the safety or efficiency of drilling operations; and

(k) "well termination date" means the date on which a well or test hole has been abandoned, completed or suspended in accordance with any applicable regulations respecting the drilling for petroleum made under Part III.

(2) Subject to section 18 and this section, information or documentation provided for the purposes of this Part or Part III or any regulation made under either Part, whether or not such information or documentation is required to be provided under either Part or any regulation made thereunder, is privileged and shall not knowingly be disclosed without the consent in writing of the person who provided it except for the purposes of the administration or enforcement of either Part or for the purposes of legal proceedings relating to such administration or enforcement.

(3) No person shall be required to produce or give evidence relating to any information or documentation that is privileged under subsection (2) in connection with any legal proceedings, other than proceedings relating to the administration or enforcement of this Part or Part III.

(4) For greater certainty, this section does not apply to a document that has been registered under Division VII.

(5) Subsection (2) does not apply to the following classes of information or documentation obtained as a result of carrying on a work or activity that is authorized under Part III, namely, information or documentation in respect of

- (a) an exploratory well, where the information or documentation is obtained as a direct result of drilling the well and if two years have passed since the well termination date of that well;
- (b) a delineation well, where the information or documentation is obtained as a direct result of drilling the well and if the later of
 - (i) two years since the well termination date of the relevant exploratory well, and
 - (ii) ninety days since the well termination date of the delineation well,have passed;
- (c) a development well, where the information or documentation is obtained as a direct result of drilling the well and if the later of
 - (i) two years since the well termination date of the relevant exploratory well, and
 - (ii) sixty days since the well termination date of the development well,have passed;
- (d) geological work or geophysical work performed on or in rela-

tion to any portion of the offshore area,

- (i) in the case of a well site seabed survey where the well has been drilled, after the expiration of the period referred to in paragraph (a) or the later period referred to in subparagraph (i) or (ii) of paragraph (b) or subparagraph (i) or (ii) of paragraph (c), according to whether paragraph (a), (b) or (c) is applicable in respect of that well, or
 - (ii) in any other case, after the expiration of five years following the date of completion of the work or after the reversion of that portion of the offshore area to Crown reserve areas, whichever occurs first;
- (e) any engineering research or feasibility study or experimental project, including geotechnical work, carried out on or in relation to any portion of the offshore area,
- (i) where it relates to a well and the well has been drilled, after the expiration of the period referred to in paragraph (a) or the later period referred to in subparagraph (i) or (ii) of paragraph (b) or subpara-

- graph (i) or (ii) of paragraph (c), according to whether paragraph (a), (b) or (c) is applicable in respect of that well, or
- (ii) in any other case, after the expiration of five years following the date of completion of the research, study or project or after the reversion of that portion of the offshore area to Crown reserve areas, whichever occurs first;
- (f) any contingency plan formulated in respect of emergencies arising as a result of any work or activity authorized under Part III;
- (g) an accident or oil spill, diving work, weather observations or the status of operational activities or of the development of or production from a pool or field;
- (h) any study funded from an account established under subsection (1) of section 49 of the Canada Oil and Gas Act, if the study has been completed; and
- (i) an environmental study, other than a study referred to in paragraph (h),
- (i) where it relates to a well and the well has been drilled, after the

expiration of the period referred to in paragraph (a) or the later period referred to in subparagraph (i) or (ii) of paragraph (b) or subparagraph (i) or (ii) of paragraph (c), according to whether paragraph (a), (b) or (c) is applicable in respect of that well, or

- (ii) in any other case, if five years have passed since the completion of the study.

(6) Notwithstanding subparagraph (ii) of paragraph (d) of subsection (5), any information or documentation in respect of geological work or geophysical work that is performed in relation to a well after the commencement of the drilling of the well may be disclosed in accordance with that subparagraph, but shall not be disclosed prior to the expiration of the period referred to in paragraph (a) or the later period referred to in subparagraph (i) or (ii) of paragraph (b) or subparagraph (i) or (ii) of paragraph (c), according to whether paragraph (a), (b) or (c) is applicable in respect of that well.

Arbitration

Arbitration

115.(1) Where a person occupies any portion of the offshore area under a lawful right or title other than an interest, no person acting under an interest shall enter that portion of the offshore area for the purpose of any work or activity without the consent of the occupier or, where such consent has

been sought and has not been obtained, without an order for entry from an arbitrator made pursuant to arbitration conducted in accordance with the regulations.

(2) For the purposes of subsection (1), an arbitration order shall operate notwithstanding any right or title of the occupier of the portion of the offshore area to which that arbitration order relates.

Operating
agreements

116.(1) Where a dispute of a prescribed class arises between two or more interest holders of an interest in respect of any operations conducted in carrying out a work or activity in the offshore area authorized under Part III and an operating agreement or other similar arrangement that extends to such work or activity is not in force or was made prior to March 5, 1982, the matters in dispute may, by order of the Board, be submitted to arbitration conducted in accordance with the regulations.

(2) Subsection (1) applies only in respect of

- (a) interests in force on March 5, 1982 in relation to any portion of the offshore area; and
- (b) interests immediately succeeding the interests referred to in paragraph (a) in relation to that portion of the offshore area where that portion of the offshore area was not a Crown reserve area on the expiration of the interests referred to in paragraph (a).

(3) An order of an arbitrator made pursuant to arbitration under subsection (1) is binding on all interest holders specified in the order from the date specified in the order, and the terms and conditions of the order are deemed to be terms and conditions of the interest to which the matters relate.

Regulations

117.(1) Subject to section 7, the Lieutenant-Governor in Council may make regulations for carrying out the purposes and provisions of sections 115 and 116 and, without restricting the generality of the foregoing, may make regulations

- (a) governing arbitration and the making of arbitration orders;
- (b) prescribing the classes of disputes that may be submitted to arbitration; and
- (c) governing appeals from and enforcement of arbitration orders.

(2) Regulations made under subsection (1) may apply generally to the offshore area or any portion thereof.

Cancellation of Rights

Notice to
comply

118.(1) Where the Board has reason to believe that an interest owner or holder is failing or has failed to meet any requirement of or under this Part or Part III or any regulation made under either Part, the Board may give notice to that interest owner or holder requiring compliance with the requirement within ninety days after the date of the notice or within such longer period as the Board considers appropriate.

(2) Notwithstanding anything in this Part but subject to sections 31 to 40, where an interest owner or holder fails to comply with a notice under subsection (1) within the period specified in the notice and the Board considers that the failure to comply warrants cancellation of the interest of the interest owner or holder or any share in the interest held by the holder with respect to a portion only of the offshore area subject to the interest, the Board may, by order subject to section 119, cancel that interest or share, and where the interest or share is so cancelled, the portions of the offshore area thereunder become Crown reserve areas.

Hearings and Judicial Review

Oil and Gas
Committee

119.(1) In this section, "Committee" means the Oil and Gas Committee established by Part III.

(2) The Board shall, not less than thirty days before making any order or decision or taking any action in respect of which it is expressly stated in this Part to be subject to this section, give notice in writing to the persons the Board considers to be directly affected by the proposed order, decision or action.

(3) Any person receiving a notice under subsection (2) may, in writing, request a hearing within the thirty day period referred to in that subsection and, on receipt of such a request, the Board shall direct the Committee to appoint a time and place for a hearing and give notice thereof to the person who requested the hearing.

(4) Any person requesting a hearing under subsection (3) may make representations and introduce witnesses and documents at the hearing.

(5) For the purposes of a hearing requested under subsection (3), the Committee has, regarding the attendance, swearing and examination of witnesses and the production and inspection of documents, all such powers, rights and privileges as are vested in a superior court of record.

(6) On the conclusion of the hearing, the Committee shall submit to the Board its recommendations concerning the proposed order, decision or action of the Board, together with the evidence and other material that was before the Committee.

(7) Before making any order or decision or taking any action in respect of which a hearing has been held, the Board shall consider the recommendations of the Committee.

(8) Where an order, decision or action referred to in subsection (2) is made or taken, the Board shall notify the person who requested a hearing in respect of the order, decision or action under subsection (3) and, on request by that person, publish or make available to that person the reasons for the order, decision or action.

(9) An order, decision or action referred to in subsection (2) takes effect as of

- (a) the day that immediately follows the last day of the thirty day period referred to in that

subsection, where no hearing is requested under subsection (3); or

- (b) the day that the order or decision is made or the action is taken by the Board, where a hearing is requested under subsection (3).

(10) Any order, decision or action in respect of which a hearing is held under this section is subject to review and to be set aside by the Trial Division.

Regulations

Regulations

120.(1) Subject to section 7, the Lieutenant-Governor in Council may make regulations for carrying out the purposes and provisions of this Part and without restricting the generality of the foregoing, may make regulations

- (a) not inconsistent with the Canada Lands Surveys Act authorizing or requiring the survey, division and subdivision of the offshore area and defining and describing the divisions and subdivisions;
- (b) prescribing the information and documentation to be provided by interest owners and interest holders for the purposes of this Part, the time when and manner in which such information and documentation is to be provided, authorizing the Board to prescribe the form in which it is to be provided and requiring such information and documentation

to be provided in accordance with the regulations;

- (c) requiring fees and deposits to be paid in respect of interests, prescribing the amounts of such fees and deposits, the time and manner of their payment and providing for the administration of such fees and deposits and the disposition and return of deposits; and
- (d) prescribing any other matter or thing that by this Part is to be prescribed or that is to be done by regulations.

(2) Subject to subsection (3), a copy of each regulation that the Lieutenant-Governor in Council proposes to make under subsection (1) shall be published in the Gazette and a reasonable opportunity shall be afforded to interested persons to make representations to the Board with respect thereto.

(3) No proposed regulation need be published more than once under subsection (2) whether or not it is altered or amended after such publication as a result of representations made by interested persons as provided in that subsection.

Forms

121.(1) The Board may prescribe any form or any information to be given on a form that is by this Part or the regulations to be prescribed and may include on any form so prescribed a declaration, to be signed by the person completing the form, declaring that the information given by that person on the form is, to

the best of his or her knowledge, true, accurate and complete.

(2) Every form purporting to be a form prescribed or authorized by the Board shall be deemed to be a form prescribed by the Board under this Part unless called in question by the Board or some person acting for the Board or Her Majesty in right of Canada or the province.

(3) Where a form or information to be given on a form is prescribed by the Board pursuant to this Act, it shall be deemed not to be subordinate legislation within the meaning of The Statutes and Subordinate Legislation Act.

DIVISION IX

TRANSITIONAL, CONSEQUENTIAL AND COMMENCEMENT

Transitional

Exploration
agreements
extent are
continued

122.(1) Where an exploration agreement in relation to any portion of the offshore area was entered into or negotiations in respect thereof were completed under the Canada Oil and Gas Act before the coming into force of this section, that exploration agreement shall, for the purposes of this Part, be referred to as an exploration licence and shall, subject to this Part, have effect in accordance with its terms and conditions.

(2) Where a declaration of significant discovery was made under section 44 of the Canada Oil and Gas Act and is in force on the coming into force of this section, it continues in force as if it

were made pursuant to section 70 of this Part.

(3) Where, on the coming into force of this section, an exploration agreement is continuing in force pursuant to subsection (4) of section 16 of the Canada Oil and Gas Act, it shall be deemed to be a significant discovery licence issued under this Part on the coming into force of this section and is subject to this Part.

Replacement
of rights

123.(1) Subject to section 122 and subsection (2) of section 124, the interests provided for under this Part replace all petroleum rights or prospects thereof acquired or vested in relation to any portion of the offshore area prior to the coming into force of this section.

(2) No party shall have any right to claim or receive any compensation, damages, indemnity or other form of relief from Her Majesty in right of the province or from any servant or agent thereof for any acquired, vested or future right or entitlement or any prospect thereof that is replaced or otherwise affected by this Part, or for any duty or liability imposed on that party by this Part.

Regulations
continue in
force

124.(1) The Canada Oil and Gas Land Regulations remain in force to the extent that they are consistent with this Part until they are revoked or replaced by regulations made under this Part.

(2) All interests provided by the Canada Oil and Gas Land Regulations that are in force on the coming into force of

this section continue in force subject to sections 125 to 128.

(3) All rights of Petro-Canada to acquire further interests or shares in interests as a result of the operation of section 33, 120 or 121 of the Canada Oil and Gas Land Regulations are abrogated as of March 5, 1982.

(4) Where any portion of the off-shore area becomes a Crown reserve area on or after April 30, 1980, Petro-Canada shall not be entitled to exercise any rights under section 33 of the Canada Oil and Gas Land Regulations with respect to that Crown reserve area.

(5) Where a person acquires, disposes of or otherwise deals in an interest or a share in an interest in respect of which Petro-Canada would, but for the circumstances described in paragraph (a) or (b), have had any right under section 33, 120 or 121 of the Canada Oil and Gas Land Regulations, no such acquisition, disposition or dealing is vitiated by reason only of

- (a) the failure to give Petro-Canada a notice required under any of those sections; or
- (b) the erroneous determination of a Canadian participation rate under those regulations.

(6) Subsection (5) has retrospective application to any acquisition, disposition or dealing that occurred prior to March 5, 1982.

(7) In this section, "Petro-Canada" means the corporation established by the Petro-Canada Act.

Former permits, former special renewal permits and former exploration agreements

125.(1) Subject to sections 127 and 128, the interest owner of a former permit, former special renewal permit or former exploration agreement shall, on or before the first anniversary date of any such interest following March 5, 1982 or on or before six months following such date, whichever is the later, negotiate an exploration licence with the Board subject to sections 31 to 40.

(2) Where an interest owner referred to in subsection (1) does not comply with that subsection, the portion of the offshore area under the relevant interest is deemed to be surrendered and becomes a Crown reserve area.

(3) Notwithstanding anything in this Part, an exploration licence under subsection (1) may be extended to include all or any portion of the offshore area under the preceding interest and any related portions of the offshore area that, immediately prior to such extension, were Crown reserve areas.

(4) Where a former special renewal permit or former exploration agreement contains provisions for the drilling of one or more wells, the Board shall offer to issue an exploration licence to the interest owner for a term equal to the balance of the term of the former special renewal permit or former exploration agreement remaining on March 5, 1982 and having the same drilling provisions.

Former leases

126.(1) Subject to sections 127 and 128, the interest owner of a former lease shall, on or before the first anniversary date of the former lease following March 5, 1982 or on or before six months following such date, whichever is the later, negotiate an explor-

ation licence with the Board subject to sections 31 to 40.

(2) Where the interest owner referred to in subsection (1) does not comply with that subsection, the portion of the offshore area under the former lease is deemed to be surrendered and becomes a Crown reserve area.

(3) Subsection (3) of section 125 applies, with such modifications as the circumstances require, to lands that may be included in an exploration licence under subsection (1).

Extension
of time

127. Where an exploration licence required to be negotiated under section 125 or 126 cannot be negotiated within the period provided in those sections for any reason not attributable to the interest owner, the Board shall extend that period to allow for such negotiation within a reasonable time.

Consolidated
exploration
agreement

128.(1) One or more interest owners of former permits, former special renewal permits, former exploration agreements or former leases may, for the purposes of complying with subsection (1) of section 125 or subsection (1) of section 126, negotiate together a single exploration licence that would consolidate any number or combination of such interests held by those interest owners.

(2) Subject to sections 31 to 40, an exploration licence negotiated pursuant to subsection (1) shall contain any terms and conditions that may be agreed on by the Board and the interest owners thereof.

Crown share 129. For greater certainty, the
abrogated reservation to Her Majesty in right of
Canada of a Crown share in any interest
granted or entered into under the Canada
Oil and Gas Act prior to the coming into
force of this section is abrogated as of
the day this section comes into force.

PART III

PRODUCTION AND CONSERVATION

Interpretation

- Definitions 130. In this Part
- (a) "Chief Conservation Officer" means the person designated as Chief Conservation Officer pursuant to section 135;
 - (b) "Committee" means the Oil and Gas Committee established by section 136;
 - (c) "lease" means an oil and gas lease issued pursuant to regulations made in accordance with the Territorial Lands Act (Canada) and the Public Lands Grants Act (Canada) and includes a production licence issued under Part II;
 - (d) "permit" means an exploratory oil and gas permit issued pursuant to regulations made in accordance with the Territorial Lands Act (Canada) and the Public Lands Grants Act (Canada) and includes an exploration agreement entered into under the Canada Oil and Gas Regulations and any explorat-

ion agreement or licence that is subject to Part II;

- (e) "pipeline" means any pipe or any system or arrangement of pipes by which petroleum or water incidental to the drilling for or production of petroleum is conveyed from any wellhead or other place at which it is produced to any other place, or from any place where it is stored, processed or treated to any other place, and includes all property of any kind used for the purpose of, or in connection with or incidental to, the operation of a pipeline in the gathering, transporting, handling and delivery of petroleum and, without restricting the generality of the foregoing, includes offshore installations or vessels, tanks, surface reservoirs, pumps, racks, storage and loading facilities, compressors, compressor stations, pressure measuring and controlling equipment and fixtures, flow controlling and measuring equipment and fixtures, metering equipment and fixtures, and heating, cooling and dehydrating equipment and fixtures, but does not include any pipe or any system or arrangement of pipes that constitutes a distribution system for the distribution of gas to ultimate consumers; and
- (f) "well" means any opening in the ground (not being a seismic shot hole) that is made,

to be made or is in the process of being made, by drilling, boring or other method,

- (i) for the production of petroleum;
- (ii) for the purpose of searching for or obtaining petroleum,
- (iii) for the purpose of obtaining water to inject into an underground formation,
- (iv) for the purpose of injecting gas, air, water or other substance into an underground formation, or
- (v) for any purpose, if made through sedimentary rocks to a depth of at least one hundred and fifty metres.

Application

Application

131. This Part applies in respect of the exploration and drilling for and the production, conservation, processing and transportation of petroleum in the offshore area.

Prohibition

Prohibition

132. No person shall carry on any work or activity related to the exploration or drilling for or the production,

conservation, processing or transportation of petroleum in the offshore area unless

- (a) that person is the registered holder of an operating licence under this Part or an exploratory licence under the former regulations;
- (b) written authorization for each proposed work or activity is given by the Board or a person designated by the Board prior to the commencement of operations; and
- (c) where it is required, that person is authorized or entitled to carry on business in the place where that person proposes to carry on the work or activity.

Licenses and Authorizations

Operating Licences and Authorization for Work

Licences and authorizations 133.(1) On application made in accordance with subsection (2), the Board

- (a) may issue an operating licence, renewable annually, subject to such requirements as the Board determines or as may be prescribed and to such fees and deposits as are prescribed; and
- (b) may authorize in writing each work or activity proposed to be carried on, subject to sections 45 and 134, such

approvals as the Board determines or as may be granted in accordance with the regulations and such requirements and deposits as the Board determines or as may be prescribed, including

- (i) requirements relating to liability for loss, damage, costs or expenses,
- (ii) requirements for carrying out of environmental programs or studies, and
- (iii) requirements for the payment of expenses incurred by the Board in approving the design, construction and costs of production facilities and production platforms as those terms are defined in the regulations.

(2) An application made for the purposes of subsection (1) shall be in the form and contain the information prescribed by the Board and shall be made at such time and in such manner as may be prescribed.

(3) The Board may suspend or revoke any operating licence issued pursuant to paragraph (a) of subsection (1) or any authorization given pursuant to paragraph (b) of subsection (1) for failure to comply with, contravention of or default in respect of

- (a) any requirement, approval, fee or deposit subject to which the licence or authorization was issued or given; or

(b) any applicable regulation.

(4) An operating licence expires on the thirty-first day of March next following the date on which it is issued and may be renewed for successive periods not exceeding one year each.

(5) Subject to this Part and the regulations, and to section 115 and the regulations made thereunder for the purposes of that section, the holder of an operating licence may, for the purpose of exploring for petroleum, enter on and use the surface of the offshore area in order to carry on the work or activity authorized under paragraph (b) of subsection (1).

Development Plan Approval

Approval of
 general
 approach of
 development

134.(1) No approval that is

- (a) applicable to an authorization under paragraph (b) of subsection (1) of section 133 to carry on work or activity in relation to developing a pool or field; and
- (b) prescribed by the regulations for the purposes of this subsection

shall be granted, except with the approval of both Ministers, unless the Board, on application submitted in accordance with subsection (2), has approved a development plan relating to the pool or field pursuant to paragraphs (a) and (b) of subsection (4).

(2) For the purposes of subsection (1), an application for the approval of a development plan shall be submitted to

the Board in the form and containing the information prescribed by the Board, at such time and in such manner as may be prescribed by the regulations, together with the proposed development plan in the form and containing the information described in subsection (3).

(3) A development plan relating to the proposed development of a pool or field submitted pursuant to this section shall be set out in two parts, containing

- (a) in Part I, a description of the general approach of developing the pool or field, and in particular, information in such detail as may be prescribed, with respect to
 - (i) the scope, purpose, location, timing and nature of the proposed development,
 - (ii) the production rate, evaluations of the pool or field, estimated amounts of petroleum proposed to be recovered, reserves, recovery methods, production monitoring, procedures, costs and environmental factors in connection with the proposed development, and
 - (iii) the production system and any alternative production systems that could be used for the development of the pool or field; and

(b) in Part II, all technical or other information and proposals, as may be prescribed, necessary for a comprehensive review and evaluation of the proposed development.

(4) After reviewing an application and development plan submitted by any person pursuant to this section the Board may, subject to such requirements as the Board deems appropriate or as may be prescribed, approve

(a) subject to sections 31 to 40, Part I of the development plan; and

(b) Part II of the development plan.

(5) Where a development plan has been approved pursuant to subsection (4), no alteration or amendment of Part I or II of the development plan shall be made unless it is approved by the Board in accordance with paragraph (a) or (b) of subsection (4), as the case may be, on submission of a revised application and development plan in accordance with subsection (2).

(6) Subsections (2) to (5) apply, with such modifications as the circumstances require, with respect to a revised application and development plan submitted pursuant to subsection (5).

Chief Conservation Officer

Chief
Conservat-
ion Officer

135. The Board may designate the Chief Executive Officer or any other person as Chief Conservation Officer for the purposes of this Part.

Oil and Gas Committee
Constitution

Oil and Gas
Committee

136.(1) The Board may, for the purposes of this Part and Part III of the Federal Act, establish a committee to be known as the Oil and Gas Committee, consisting of not more than five members, not more than three of whom may be employees in the public service of Canada or of the province.

(2) The members of the Committee shall be appointed by the Board to hold office for a term of three years, and one member shall be designated as chairman for such term as may be fixed by the Board.

(3) A retiring chairman or retiring member may be reappointed to the Committee in the same or another capacity.

Qualification
of
members

137.(1) The Board shall appoint as members of the Committee as least two persons who appear to the Board to have specialized, expert or technical knowledge of petroleum.

(2) The members and employees of the Board and the Chief Conservation Officer are not eligible to be members of the Committee.

(3) The Board shall provide the Committee with such officers, clerks and employees as may be necessary for the proper conduct of the affairs of the Committee, and may provide the Committee with such professional or technical assistance for temporary periods, or for specific work as the Committee may request, but no such assistance shall be provided otherwise than from the staff

of the Board except with the approval of the two Ministers.

(4) The members of the Committee who are not employees of the public service of Canada or of the province shall be paid such remuneration as may be authorized by the Board.

(5) The members of the Committee are entitled to be paid reasonable travel and living expenses while absent from their ordinary place of residence in the course of their duties.

Interest in
petroleum
properties

138. No member of the Committee shall have a pecuniary interest of any description, directly or indirectly, in any property in petroleum to which this Part applies or own shares in any company engaged in any phase of the petroleum industry in Canada in an amount in excess of five per cent of the issued shares thereof and no member who owns any shares of any company engaged in any phase of the petroleum industry in Canada shall vote when a question affecting such a company is before the Committee.

Quorum &
powers of
Board

139.(1) A majority of the members, including one member who is not an employee in the public service of Canada or of the province, constitutes a quorum of the Committee.

(2) The Committee may make general rules not inconsistent with this Part regulating its practice and procedure and the places and times of its sittings.

Jurisdiction and Powers

Jurisdiction 140.(1) Where, under this Part, the Committee is charged with a duty to hold an inquiry or to hear an appeal, the Committee has full jurisdiction to inquire into, hear and determine the matter of any such inquiry or appeal and to make any order, or give any direction that pursuant to this Part the Committee is authorized to make or give or with respect to any matter, act or thing that by this Part may be prohibited or approved by the Committee or required by the Committee to be done.

(2) For the purpose of any inquiry, hearing or appeal, or the making of any order pursuant to this Part, the Committee has, regarding the attendance, swearing and examination of witnesses, the production and inspection of documents, the entry on and inspection of property, the enforcement of its orders and regarding other matters necessary or proper for the due exercise of its jurisdiction pursuant to this Part, all such powers, rights and privileges as are vested in a superior court of record.

(3) The finding or determination of the Committee upon any question of fact within its jurisdiction is binding and conclusive.

Deputing member to hold inquiry 141.(1) The Committee may authorize and depute any member thereof to inquire into such matter before the Committee as may be directed by the Committee and to report the evidence and findings, if any, thereon to the Committee, and when such report is made to the Committee, it may be adopted as a finding of the Committee or otherwise dealt

with as the Committee considers advisable.

(2) Where an inquiry is held by a member under subsection (1), the member has all the powers of the Committee for the purpose of taking evidence or acquiring information for the purposes of the report to the Committee.

Advisory
 functions

142. The Board may at any time refer to the Committee for a report or recommendation any question, matter or thing arising under this Part or relating to the conservation, production, storage, processing or transportation of petroleum.

Enforcement

Enforce-
 ment of
 Committee
 orders

143.(1) Any order made by the Committee may, for the purpose of enforcement thereof, be made an order of the Supreme Court of Newfoundland and shall be enforced in like manner as any order of that Court.

(2) To make an order of the Committee an order of the Supreme Court of Newfoundland, the practice and procedure established by that Court for making any order an order of that Court may be followed or in lieu thereof the secretary or another officer of the Committee may file in the Registry of the Court a certified copy of the order and thereupon the order becomes an order of the Court.

(3) When an order of the Committee has been made an order of the Supreme Court, any order of the Committee, or of the Board under section 181, rescinding or replacing the first mentioned order of the Committee, shall be deemed to

cancel the order of the Court and may in like manner be made an order of the Court.

Division I

PRODUCTION AND CONSERVATION

Regulatory
power of
Lieutenant-
Governor in
Council

144.(1) Subject to section 7, the Lieutenant-Governor in Council may make regulations respecting the exploration and drilling for and the production and conservation, processing and transportation of petroleum and in particular, but without restricting the generality of the foregoing, may make regulations

- (a) respecting the licensing, drilling, spacing, locating, completing, producing, equipping, suspending or abandoning of wells or other works authorized under section 133;
- (b) respecting the regulating and controlling of the rate at which petroleum or water may be produced from any well, pool or field;
- (c) respecting the reporting of information and data contained in the course of the exploration for, the drilling for and the production of petroleum and the keeping of records and measurements of all petroleum and water produced;
- (d) concerning the safety and the inspection of all operations conducted in connection with the exploration and drilling for and the production, pro-

cessing and transportation of petroleum and prescribing the measures to be taken to ensure the safety of such operations;

- (e) requiring and prescribing the making of tests, logs, analyses and surveys, and the taking of samples;
- (f) respecting the designation of fields and pools;
- (g) prescribing the methods to be used for the measurement of petroleum, water and other substances obtained from wells;
- (h) respecting the repressurizing, cycling and pressure maintenance in any field or pool;
- (i) authorizing the Board, or any person designated by the Board, to exercise such powers and perform such duties as may be necessary for the management and control of petroleum production, and authorizing the making of such orders as may be specified;
- (j) authorizing the Board, or any person designated by the Board, to exercise such powers and perform such duties as may be necessary for the removal of petroleum from any portion of the offshore area, and authorizing the making of such orders as may be specified;

- (k) authorizing the Board, or any person designated by the Board, to exercise such powers and perform such duties as may be necessary for the design, construction, operation or abandonment of pipeline within any portion of the offshore area, and authorizing the making of such orders as may be specified;
- (l) for the prevention of waste within the meaning of this Part;
- (m) prescribing the conditions under which drilling operations may be carried out and any special measures to be taken for such operations;
- (n) prescribing the measures to be adopted to confine any petroleum or water encountered during drilling operations to the original stratum and to protect the contents of the stratum from infiltration, inundation and migration;
- (o) prescribing the minimum acceptable standards for the methods, tools, equipment and materials to be used in drilling, completing, operating, suspending or abandoning any well or other work authorized under section 133;
- (p) prescribing minimum acceptable standards for the construction, alteration or use of any works, fittings, machinery,

plant and appliances used for the development, production, transmission, distribution, measurement, storage or handling of any petroleum;

- (q) prescribing the measures necessary to prevent pollution of air, land or water as a result of the exploration and drilling for or the production, storage, transportation, distribution, measurement, processing or handling of any petroleum or any substance obtained from or associated with petroleum;
- (r) prescribing measures necessary for the disposal or gathering, and injection into an underground formation, of water, petroleum or other substances produced from a pool or oil deposit;
- (s) prescribing requirements, fees and deposits subject to which operating licences may be granted under section 133;
- (t) prescribing approvals, requirements and deposits applicable to authorizations under section 133 to carry on work or activity in any portion of the offshore area applicable to such work or activity;
- (u) authorizing the Board, or any person designated by the Board, to grant any approval prescribed pursuant to paragraph (t), subject to such requirements as the Board or

that person determines or as may be prescribed pursuant to this paragraph, and to suspend or revoke such an approval for failure to comply with or contravention of the requirements subject to which the approval was granted;

- (v) prescribing requirements for the purposes of subsection (4) of section 134 and any other thing that is to be prescribed for the purposes of section 134;
- (w) prescribing the time and manner of making an application for the purposes of subsection (1) of section 133;
- (x) prescribing the manner in which spills shall be reported under subsection (2) of section 154;
- (y) prescribing limits of liability for the purposes of section 155 or the manner of determining such limits; and
- (z) prescribing anything that is to be prescribed for the purposes of section 156.

(2) Subject to subsection (3), a copy of each regulation that the Lieutenant-Governor in Council proposes to make under this Division shall be published in the Gazette and a reasonable opportunity shall be afforded to interested persons to make representations to the Provincial Minister with respect thereto.

(3) No proposed regulation need be published more than once under subsection (2) whether or not it is altered or amended after such publication as a result of representations made by interested persons as provided in that subsection.

(4) Unless otherwise provided in this Part, regulations made under subsection (1) may incorporate by reference the standards or specifications of any government, person or organization, either as of a fixed time or as amended from time to time.

Equivalent
standards

145.(1) The Chief Conservation Officer may, in any particular case, authorize the use of equipment, methods, measures or standards that do not comply with the regulations where the Chief Conservation Officer is satisfied that such use provides a level of safety and pollution prevention at least equivalent to that provided by compliance with the regulations.

(2) No person commits an offence under the regulations if that person acts in compliance with an authorization under subsection (1).

Guidelines
and inter-
pretation
notes

145.1(1) The Board may issue and publish, in such manner as the Board deems appropriate, guidelines and interpretation notes with respect to the application and administration of section 134 or any regulations made under section 144.

(2) Guidelines and interpretation notes issued pursuant to subsection (1) shall be deemed not to be subordinate legislation for the purposes of The

Statutes and Subordinate Legislation
Act.

Production Orders

Production
orders

146.(1) Where the Chief Conservat-
ion Officer on reasonable grounds is of
the opinion that

- (a) with respect to an interest in
any portion of the offshore
area, the capability exists to
commence, continue or increase
production of petroleum; and
- (b) a production order would stop
waste or would otherwise acco-
rd with sound engineering and
economic principles,

the Chief Conservation Officer may order
the commencement, continuation or incr-
ease of production of petroleum at such
rates and in such quantities as are
specified in the order.

(2) Where the Chief Conservation
Officer on reasonable grounds is of the
opinion that an order under this sub-
section would stop waste or would other-
wise accord with sound engineering and
economic principles, the Chief Conser-
vation Officer may order a decrease or
the cessation or suspension of product-
ion of petroleum for any periods specifi-
ed in the order.

(3) Subsections (2) to (4) of
section 148 and section 150 apply, with
such modifications as the circumstances
require, to an order under subsection
(1) or (2) as if it were an order under
subsection (1) of section 148.

(4) A person subject to an order under subsection (1) or (2) shall, on request, afford the Chief Conservation Officer or a person designated by the Chief Conservation Officer access to premises, files and records for all reasonable purposes related to the order.

Waste

Waste
prohibited

147.(1) Subject to subsection (5) of section 138, any person who commits waste is guilty of an offence under this Division, but a prosecution may be instituted for such an offence only with the consent of the Board.

(2) In this Part "waste", in addition to its ordinary meaning, means waste as understood in the petroleum industry and in particular, but without limiting the generality of the foregoing, includes

- (a) the inefficient or excessive use or dissipation of reservoir energy;
- (b) the locating, spacing or drilling of a well within a field or pool or within part of a field or pool or the operating of any well that, having regard to sound engineering and economic principles, results or tends to result in a reduction in the quantity of petroleum ultimately recoverable from a pool;
- (c) the drilling, equipping, completing, operating or producing of any well in a manner that causes or is likely to

cause the unnecessary or excessive loss or destruction of petroleum after removal from the reservoir;

- (d) the inefficient storage of petroleum above ground or underground;
- (e) the production of petroleum in excess of available storage, transportation or marketing facilities;
- (f) the escape or flaring of gas that could be economically recovered and processed or economically injected into an underground reservoir; or
- (g) the failure to use suitable artificial, secondary or supplementary recovery methods in a pool when it appears that such methods would result in increasing the quantity of petroleum, ultimately recoverable under sound engineering and economic principles.

Prevention
of waste

148.(1) Where the Chief Conservation Officer on reasonable grounds is of the opinion that waste, other than waste as defined in paragraph (f) or (g) of subsection (2) of section 147, is being committed, the Chief Conservation Officer may, subject to subsection (2), order that all operations giving rise to such waste cease until the Chief Conservation Officer is satisfied that the waste has stopped.

(2) Before making any order under subsection (1), the Chief Conservation Officer shall hold an investigation at

which interested persons shall be given an opportunity to be heard.

(3) Notwithstanding subsection (2), the Chief Conservation Officer may, without an investigation, make an order under this section requiring all operations to be shut down if in the opinion of the Chief Conservation Officer it is necessary to do so to prevent damage to persons or property or to prevent pollution; but as soon as possible after making any such order and in any event within fifteen days thereafter, the Chief Conservation Officer shall hold an investigation at which interested persons shall be given an opportunity to be heard.

(4) At the conclusion of an investigation under subsection (3) the Chief Conservation Officer may set aside, vary or confirm the order made, or make a new order.

Giving effect
to order

149.(1) For the purpose of giving effect to an order made under section 148, the Chief Conservation Officer may authorize such persons as may be necessary to enter the place where the operations giving rise to the waste are being carried out and take over the management and control of such operations and any works connected therewith.

(2) A person authorized under subsection (1) to take over the management and control of operations shall manage and control those operations and do all things necessary to stop the waste and the cost thereof shall be borne by the person who holds the permit or the lease and, until paid constitutes a debt recoverable by action in any

court of competent jurisdiction as a debt due to the Board.

Appeal to
Committee

150.(1) A person aggrieved by an order of the Chief Conservation Officer after an investigation under section 148 may appeal to the Committee to have the order reviewed.

(2) After hearing the appeal, the Committee may

- (a) set aside, confirm or vary the order made by the Chief Conservation Officer;
- (b) order such works to be undertaken as may be considered necessary to prevent waste, the escape of petroleum or any other contravention of this Division or the regulations; or
- (c) make such other or further order as the Committee considers appropriate.

Waste by
failure to
utilize
petroleum,
etc.

151.(1) When the Chief Conservation Officer on reasonable grounds is of the opinion that waste as defined in paragraph (f) or (g) of subsection (2) of section 147 is occurring in the recovery of petroleum from a pool, the Chief Conservation Officer may apply to the Committee for an order requiring the operators within the pool to show cause at a hearing to be held on a day specified in the order why the Committee should not make a direction in respect thereof.

(2) On the day specified in the order under subsection (1), the Committee shall hold a hearing at which the

Chief Conservation Officer, the operators and other interested persons shall be given an opportunity to be heard.

Order

152.(1) If, after the hearing mentioned in section 151, the Committee is of the opinion that waste as defined in paragraph (f) or (g) of subsection (2) of section 147 is occurring in the recovery of petroleum from a pool, the Committee may, by order,

- (a) direct the introduction of a scheme for the collection, processing, disposition or reinjection of any gas produced from such pool; or
- (b) direct repressurizing, recycling or pressure maintenance for the pool or any part of the pool and for, or incidental to such purpose, direct the introduction or injection into that pool, or part thereof, of gas, water or other substance,

and the order may further direct that the pool or part thereof specified in the order be shut in if the requirements of the order are not met or unless a scheme is approved by the Committee and in operation by a date fixed by the order.

(2) Notwithstanding subsection (1), the Committee may permit the continued operation of a pool or any part of a pool after the date fixed by an order under subsection (1) if in the opinion of the Committee a scheme for the repressurizing, recycling or pressure maintenance or the processing, storage or disposal of gas is in course of prepar-

ation, but any such continuation of operations is subject to any conditions imposed by the Committee.

Petroleum Spills

Definitions re petroleum spills

153.(1) In sections 154 to 159, "spill" means a discharge, emission or escape of petroleum other than one that is authorized pursuant to subsection (4) or any other Act of the Parliament of Canada or that constitutes a discharge of a pollutant caused by or otherwise attributable to a ship within the meaning of the Canada Shipping Act.

(2) In sections 155 and 159, "debris" means any installation or structure on the seabed of the offshore area that was put in place in the course of any work or activity authorized pursuant to paragraph (b) of subsection (1) of section 133 and that has been abandoned without such authorization as may be required by or pursuant to this Part or any material that has broken away or has been jettisoned, or that has been displaced from the seabed, in the course of any such work or activity.

(3) In section 155, "actual loss or damage" includes loss of income, including future income, and, with respect to any aboriginal peoples of Canada, includes loss of hunting, fishing and gathering opportunities.

(4) Subject to section 7, the Lieutenant-Governor in Council may make regulations authorizing the discharge, emission or escape of petroleum of such types in such quantities, at such locations, under such conditions and by such persons as are specified in the regulations, but Her Majesty has no liability

whatever to any person arising out of such authorization.

Spills
prohibited

154.(1) No person shall cause or permit a spill on or from any portion of the offshore area.

(2) Where a spill occurs in any portion of the offshore area, any person who at the time of the spill is carrying on any work or activity related to the exploration for or development or production of petroleum in the area of the spill shall, in the manner prescribed by the regulations, report the spill to the Chief Conservation Officer.

(3) Every person required to report a spill under subsection (2) shall, as soon as possible, take all reasonable measures consistent with safety and the prevention of pollution to prevent any further spill, to repair or remedy any condition resulting from the spill and to reduce or mitigate any danger to life, health, property or the environment that results or may reasonably be expected to result from the spill.

(4) Where the Chief Conservation Officer is satisfied on reasonable grounds that

- (a) a spill has occurred in any portion of the offshore area and immediate action is necessary in order to effect any reasonable measures referred to in subsection (3); and
- (b) such action is not being taken or will not be taken under subsection (3),

the Chief Conservation Officer may take such action or direct that it be taken by such persons as may be necessary.

(5) For the purposes of subsection (4), the Chief Conservation Officer may authorize and direct such persons as may be necessary to enter the place where the spill has occurred and take over the management and control of any work or activity being carried on in the area of the spill.

(6) A person authorized and directed to take over the management and control of any work or activity under subsection (5) shall manage and control that work or activity and take all reasonable measures in relation to the spill that are referred to in subsection (3).

(7) Any costs incurred under subsection (6) shall be borne by the person who obtained an authorization under paragraph (b) of subsection (1) of section 133 in respect of the work or activity from which the spill emanated and, until paid, constitute a debt recoverable by action in any court of competent jurisdiction as a debt due to the Board.

(8) Section 150 applies, with such modifications as the circumstances require, to any action or measure taken or authorized or directed to be taken under subsections (4) to (6) as if it were taken or authorized or directed to be taken by order under subsection (1) of section 148 and as if such order were not subject to an investigation.

(9) No person required, directed or authorized to act under this section is personally liable either civilly or

criminally in respect of any act or omission in the course of complying with this section unless it is shown that such person did not act reasonably in the circumstances.

Recovery
of loss,
damage or
expenses

155.(1) Where a spill or any discharge, emission or escape of petroleum that is authorized under subsection (4) of section 153 occurs in any portion of the offshore area,

(a) the person who obtained an authorization under paragraph (b) of subsection (1) of section 133 in respect of the work or activity from which the spill or authorized discharge, emission or escape of petroleum emanated is liable, without proof of fault or negligence, up to any applicable limit of liability, for

(i) all actual loss or damage incurred by any person as a result of the spill or the authorized discharge, emission or escape of petroleum, and

(ii) the costs and expenses reasonably incurred by the Board or Her Majesty in right of Canada or the province or any other person in taking any action or measure in relation to the spill or the authorized discharge, emission or escape of petroleum; and

(b) all persons to whose fault or negligence the spill or the

authorized discharge, emission or escape of petroleum is attributable or who are by law responsible for others to whose fault or negligence the spill or the authorized discharge, emission or escape of petroleum is attributable are jointly and severally liable, to the extent determined according to the degree of the fault or negligence proved against them, for all actual loss or damage incurred by any person as a result of the spill or the authorized discharge, emission or escape of petroleum.

(2) Where any person incurs actual loss or damage as a result of debris or the Board or Her Majesty in right of Canada or the province reasonably incurs any costs or expenses in taking any remedial action in relation to debris,

(a) the person who obtained an authorization under paragraph (b) of subsection (1) of section 133 in respect of the work or activity from which the debris originated is liable, without proof of fault or negligence, up to any applicable limit of liability, for all such actual loss or damage and all such costs or expenses; and

(b) all other persons to whose fault or negligence the debris is attributable or who are by law responsible for others to whose fault or negligence the debris is attributable are

jointly and severally liable, to the extent determined according to the degree of the fault or negligence proved against them, for all such actual loss or damage and all such costs or expenses.

(3) All claims under this section may be sued for and recovered in any court of competent jurisdiction in Canada and shall rank firstly in favour of persons incurring actual loss or damage, without preference, and secondly, without preference, to meet any costs and expenses incurred by the Board or Her Majesty in right of Canada or the province.

(4) Nothing in this section suspends or limits

- (a) any legal liability or remedy for an act or omission by reason only that the act or omission is an offence under this Division or gives rise to liability under this section;
- (b) any recourse, indemnity or relief available at law to a person who is liable under this section against any other person; or
- (c) the operation of any applicable law or rule of law that is not inconsistent with this section.

(5) Proceedings in respect of claims under this section may be instituted within three years after the day when the loss, damage, costs or expenses occurred but in no case after six years

from the day the spill or the discharge, emission or escape of petroleum occurred or, in the case of debris, after the day the installation or structure in question was abandoned or the material in question broke away or was jettisoned or displaced.

Financial
responsibility

156.(1) The Board shall require a person who obtains an authorization under paragraph (b) of subsection (1) of section 133 in respect of any work or activity in any portion of the offshore area to provide for financial responsibility for the purposes of subsections (2) and (3) in the form of a letter of credit, a guarantee or indemnity bond or in any other form satisfactory to the Board, in an amount satisfactory to the Board.

(2) The Board may require that moneys in an amount not exceeding the amount prescribed by the regulations for any case or class of cases, or determined by the Board in the absence of regulations, be paid out of the funds available under the letter of credit, guarantee or indemnity bond or other form of financial responsibility provided pursuant to subsection (1), in respect of any claim for which proceedings may be instituted under section 155, whether or not such proceedings have been instituted.

(3) Where payment is required under subsection (2), it shall be made in such manner, subject to such conditions and procedures and to or for the benefit of such persons or classes of persons as may be prescribed by the regulations for any case or class of cases, or as may be required by the Board in the absence of regulations.

(4) Where a claim is sued for under section 155, there shall be deducted from any award made pursuant to the action on that claim any amount received by the claimant under this section in respect of the loss, damage, costs or expenses claimed.

Review
Committee

157.(1) A committee, consisting of members appointed by each government, and by representatives of the petroleum industry and of the fisheries industry, is established by the joint operation of this Act and the Federal Act to review and monitor sections 155 and 156 and any claims and the payment thereof made under those sections.

(2) The committee referred to in subsection (1) may be dissolved only by the joint operation of an Act of the Parliament of Canada and an Act of the Legislature.

Fisherman's
compensation

158. The Board shall promote and monitor compensation policies for fishermen sponsored by the fishing industry respecting damages of a non-attributable nature.

Inquiries

Inquiries

159.(1) Where a spill or debris or an accident or incident related to any activity to which this Division applies occurs or is found in any portion of the offshore area and results in death or injury or danger to public safety or the environment, the Board may direct an inquiry to be made and may authorize any person it deems qualified to conduct the inquiry.

(2) For the purposes of an inquiry under subsection (1), a person authorized by the Board under that subsection has and may exercise all the powers of a person appointed as a commissioner under The Public Enquiries Act.

(3) As soon as possible after the conclusion of an inquiry under subsection (1), the person or persons authorized to conduct the inquiry shall submit a report to the Board, together with the evidence and other material that was before the inquiry.

(4) A report made pursuant to subsection (3) shall be published by the Board within thirty days after the Board has received it.

(5) The Board may supply copies of a report published pursuant to subsection (4) in such manner or on such terms as the Board considers proper.

Division II

PRODUCTION ARRANGEMENTS

Definitions

160. In this Division

- (a) "pooled spacing unit" means the area that is subject to a pooling agreement or a pooling order;
- (b) "pooled tract" means the portion of a pooled spacing unit defined as a tract in a pool-

ing agreement or a pooling order;

- (c) "pooling agreement" means an agreement to pool the interests of owners in a spacing unit and to provide for the operation or the drilling and operation of a well thereon;
- (d) "pooling order" means an order made under section 162 or as altered pursuant to section 164;
- (e) "royalty interest" means any interest in, or the right to receive a portion of, any petroleum produced and saved from a field or pool or part of a field or pool or the proceeds from the sale thereof, but does not include a working interest or the interest of any person whose sole interest is as a purchaser of petroleum from the pool or part thereof;
- (f) "royalty owner" means a person, including Her Majesty, who owns a royalty interest;
- (g) "spacing unit" means that area allocated to a well for the purpose of drilling for or producing petroleum;
- (h) "tract participation" means the share of production from a unitized zone that is allocated to a unit tract under a unit agreement or unitization order or the share of production from a pooled spacing unit

that is allocated to a pooled tract under a pooling agreement or pooling order;

- (i) "unit agreement" means an agreement to unitize the interests of owners in a pool or part thereof exceeding in area a spacing unit, or such an agreement as varied by a unitization order;
- (j) "unit area" means the area that is subject to a unit agreement;
- (k) "unit operating agreement" means an agreement, providing for the management and operation of a unit area and a unitized zone, that is entered into by working interest owners who are parties to a unit agreement with respect to that unit area and unitized zone, and includes a unit operating agreement as varied by a unitization order;
- (l) "unit operation" means those operations conducted pursuant to a unit agreement or a unitization order;
- (m) "unit operator" means a person designated as a unit operator under a unit operating agreement;
- (n) "unit tract" means the portion of a unit area that is defined as a tract in a unit agreement;

- (o) "unitization order" means an order of the Committee made under section 170;
- (p) "unitized zone" means a geological formation that is within a unit area and subject to a unit agreement;
- (q) "working interest" means a right, in whole or in part, to produce and dispose of petroleum from a pool or part of a pool, whether such right is held as an incident of ownership of an estate in fee simple in the petroleum or under a lease, agreement or other instrument, if the right is chargeable with and the holder thereof is obligated to pay or bear, either in cash or out of production, all or a portion of the costs in connection with the drilling for, recovery and disposal of petroleum from the pool or part thereof; and
- (r) "working interest owner" means a person who owns a working interest.

Pooling

Voluntary pooling

161.(1) Where one or more working interest owners have leases or separately owned working interests within a spacing unit, the working interest owners and the royalty owners who own all of the interests in the spacing unit may pool their working interests and royalty interests in the spacing unit for the purpose of drilling for or producing, or both drilling for and producing,

petroleum if a copy of the pooling agreement and any amendment thereto has been filed with the Chief Conservation Officer.

(2) The Board may, on behalf of Her Majesty, enter into a pooling agreement on such terms and conditions as it deems advisable and, notwithstanding anything in this Part or Part II, the Public Lands Grants Act (Canada) or any regulations made under those Parts or that Act, the pooling agreement is binding on Her Majesty.

Pooling
order

162.(1) In the absence of a pooling agreement, a working interest owner in a spacing unit may apply for a pooling order directing the working interest owners and royalty owners within the spacing unit to pool their interests in the spacing unit for the purpose of drilling for and producing, or producing, petroleum from the spacing unit.

(2) An application under subsection (1) shall be made to the Board which shall refer the application to the Committee for the purpose of holding a hearing to determine whether a pooling order should be made and at such hearing the Committee shall afford all interested parties an opportunity to be heard.

(3) Prior to a hearing held pursuant to subsection (2), the working interest owner making application shall provide the Committee, and such other interested parties as the Committee may direct, with a proposed form of pooling agreement and the working interest owners who have interests in the spacing unit to which the proposed pooling agreement relates shall provide the Commit-

tee with such information as the Committee deems necessary.

(4) After a hearing pursuant to subsection (2), the Committee may order that all working interest owners and royalty owners who have an interest in the spacing unit shall be deemed to have entered into a pooling agreement as set out in the pooling order.

(5) Every pooling order shall provide

- (a) for the drilling and operation of a well on the spacing unit or, where a well that is capable of or that can be made capable of production has been drilled on the spacing unit before the making of the pooling order, for the future production and operation of that well;
- (b) for the appointment of a working interest owner as operator to be responsible for the drilling, operation or abandoning of the well whether drilled before or after the making of the pooling order;
- (c) for the allocation to each pooled tract of its share of the production of the petroleum from the pooled spacing unit that is not required, consumed or lost in the operation of the well, which allocation shall be on a prorated area basis unless it can be shown to the satisfaction of the Committee that such basis is unfair, whereupon the

Committee may make an allocation on some other more equitable basis;

- (d) in the event that no production of petroleum is obtained, for the payment by the applicant of all costs incurred in the drilling and abandoning of the well;
- (e) where production has been obtained, for the payment of the actual costs of drilling the well, whether drilled before or after the making of the pooling order, and for the payment of the actual costs of the completion, operation and abandoning of the well; and
- (f) for the sale by the operator of any petroleum allocated pursuant to paragraph (c) to a working interest owner where the working interest owner thereof fails to take in kind and dispose of such production, and for the deduction out of the proceeds by the operator of the expenses reasonably incurred in connection with such sale.

(6) A pooling order may provide for a penalty for a working interest owner who does not, within the time specified in the order, pay the portion of the costs attributable to the working interest owner as the share of the cost of drilling and completion of the well, but such penalty shall not exceed an amount equal to one-half of that working interest owner's share of such costs.

(7) If a working interest owner does not, within the time specified therefor in the pooling order, pay the share of the costs of the drilling, completing, operating and abandoning of the well, that portion of the costs and the penalty, if any, are recoverable only out of that share of production from the spacing unit and not in any other manner.

Effect of
pooling
order

163. Where a pooling order is made, all working interest owners and royalty owners having interests in the pooled spacing unit shall, on the making of the pooling order, be deemed to have entered into a pooling agreement as set out in the pooling order and that order shall be deemed to be a valid contract between the parties having interests in the pooled spacing unit, and all its terms and provisions, as set out therein or as altered pursuant to section 164, are binding on and enforceable against the parties thereto, including Her Majesty.

Application
to alter
pooling
order

164.(1) The Committee shall hear any application to vary, amend or terminate a pooling order where such application is made by the owners of over twenty-five per cent of the working interests in the pooled spacing unit, calculated on a prorated area basis, and may, in its discretion, order a hearing on the application of any working interest owner or royalty owner.

(2) After a hearing held pursuant to subsection (1), the Committee may vary or amend the pooling order to supply any deficiency therein or to meet changing conditions and may vary or revoke any provision that the Committee deems to be unfair or inequitable or it may terminate the pooling order.

(3) Where a pooling order is varied or amended, no change shall be made that will alter the ratios of tract participations between the pooled tracts as originally set out in the pooling order.

Prohibition

165.(1) No person shall produce any petroleum within a spacing unit in which there are two or more leases or two or more separately owned working interests unless a pooling agreement has been entered into in accordance with section 161 or in accordance with a pooling order made under section 162.

(2) Subsection (1) does not prohibit the production of petroleum for testing in any quantities approved by the Chief Conservation Officer.

Unitization

Unitization

166.(1) Any one or more working interest owners in a pool or part thereof exceeding in area a spacing unit, together with the royalty owners, may enter into a unit agreement and operate their interests pursuant to the terms of the unit agreement or any amendment thereto if a copy of the agreement and any amendment has been filed with the Chief Conservation Officer.

(2) The Board may enter into a unit agreement binding on Her Majesty, on such terms and conditions as it may deem advisable, and such of the regulations under this Part or Part II or the Public Lands Grants Act (Canada) as may be in conflict with the terms and conditions of the unit agreement stand varied or suspended to the extent necessary to give full effect to the terms and conditions of the unit agreement.

(3) Where a unit agreement filed under this section provides that a unit operator shall be the agent of the parties thereto with respect to their powers and responsibilities under this Part, the performance or non-performance thereof by the unit operator shall be deemed to be the performance or non-performance by the parties otherwise having those powers and responsibilities under this Part.

Requiring
unitization
to prevent
waste

167.(1) Notwithstanding anything in this Part, where, in the opinion of the Chief Conservation Officer, the unit operation of a pool or part thereof would prevent waste, the Chief Conservation Officer may apply to the Committee for an order requiring the working interest owners in the pool or part thereof to enter into a unit agreement and a unit operating agreement in respect of the pool or part thereof, as the case may be.

(2) Where an application is made by the Chief Conservation Officer pursuant to subsection (1), the Committee shall hold a hearing at which all interested persons shall be afforded an opportunity to be heard.

(3) If, after the hearing mentioned in subsection (2), the Committee is of the opinion that unit operation of a pool or part thereof would prevent waste, the Committee may by order require the working interest owners in the pool or part thereof to enter into a unit agreement and a unit operating agreement in respect of the pool or part thereof.

(4) If in the time specified in the order referred to in subsection (3), being not less than six months after the

date of the making of the order, the working interest owners and royalty owners fail to enter into a unit agreement and a unit operating agreement approved by the Committee, all drilling and producing operations within the pool or part thereof in respect of which the order was given shall cease until such time as a unit agreement and a unit operating agreement have been approved by the Committee and filed with the Chief Conservation Officer.

(5) Notwithstanding subsection (4), the Committee may permit the continued operation of the pool or part thereof after the time specified in the order referred to in subsection (3) if it is of opinion that a unit agreement and unit operating agreement are in the course of being entered into, but any such continuation of operations shall be subject to any conditions prescribed by the Committee.

Compulsory Unitization

Who may
apply for
unitization
order

168.(1) One or more working interest owners who are parties to a unit agreement and a unit operating agreement and own in the aggregate sixty-five per cent or more of the working interests in a unit area may apply for a unitization order with respect to the agreements.

(2) An application under subsection (1) shall be made to the Board which shall refer the application to the Committee for the purpose of holding a hearing thereon in accordance with section 170.

(3) An application under subsection (1) may be made by the unit oper-

ator or proposed unit operator on behalf of the working interest owners referred to in subsection (1).

Contents of
unitization
application

169.(1) An application for a unitization order shall contain

- (a) a plan showing the unit area that the applicant desires to be made subject to the order;
- (b) one copy each of the unit agreement and the unit operating agreement;
- (c) a statement of the nature of the operations to be carried out; and
- (d) a statement showing
 - (i) with respect to each proposed unit tract, the names and addresses of the working interest owners and royalty owners in that tract, and
 - (ii) the tracts that are entitled to be qualified as unit tracts under the provisions of the unit agreement.

(2) The unit agreement referred to in subsection (1) shall include

- (a) a description of the unit area and the unit tracts included in the agreement;
- (b) an allocation to each unit tract of a share of the production from the unitized zone

not required, consumed or lost in the unit operation;

(c) a provision specifying the manner in which and the circumstances under which the unit operation shall terminate; and

(d) a provision specifying that the share of the production from a unit area that has been allocated to a unit tract shall be deemed to have been produced from that unit tract.

(3) The unit operating agreement referred to in subsection (1) shall make provision

(a) for the contribution or transfer to the unit, and any adjustment among the working interest owners, of the investment in wells and equipment within the unit area;

(b) for the charging of the costs and expenses of the unit operation to the working interest owners;

(c) for the supervision of the unit operation by the working interest owners through an operating committee composed of their duly authorized representatives and for the appointment of a unit operator to be responsible, under the direction and supervision of the operating committee, for the carrying out of the unit operation;

- (d) for the determination of the percentage value of the vote of each working interest owner; and
- (e) for the determination of the method of voting on any motion before the operating committee and the percentage value of the vote required to carry the motion.

Hearing on
application

170.(1) Where an application made under section 138 is referred by the Board to the Committee, the Committee shall hold a hearing thereon at which all interested persons shall be afforded an opportunity to be heard.

- (2) If the Committee finds that
 - (a) at the date of the commencement of a hearing referred to in subsection (1)
 - (i) the unit agreement and the unit operating agreement have been executed by one or more working interest owners who own in the aggregate sixty-five per cent or more of the total working interests in the unit area, and
 - (ii) the unit agreement has been executed by one or more royalty owners who own in the aggregate sixty-five per cent or more of the total royalty interests in the unit area; and

- (b) the unitization order applied for would accomplish the more efficient or more economical production of petroleum from the unitized zone,

the Committee may order

- (c) that the unit agreement be a valid contract enuring to the benefit of all the royalty owners and working interest owners in the unit area and binding on and enforceable against all such owners; and
- (d) that the unit operating agreement be a valid contract enuring to the benefit of all the working interest owners in the unit area and binding on and enforceable against all such owners,

and, subject to section 171, the unit agreement and the unit operating agreement have the effect given them by the order of the Committee.

(3) In a unitization order, the Committee may vary the unit agreement or the unit operating agreement by adding provisions or by deleting or amending any provision thereof.

Effective
date of
unitization
order

171.(1) Subject to subsection (2), a unitization order shall become effective on the date the Committee prescribes in the order but such date shall be a date not less than thirty days following the day the order is made.

(2) Where a unit agreement or unit operating agreement is varied by

the Committee in a unitization order, the effective date prescribed in the order shall be a date not less than thirty days following the day the order is made, but the order becomes ineffective if, before the effective date, the applicant files with the Committee a notice withdrawing the application on behalf of the working interest owners or there are filed with the Committee statements in writing objecting to the order and signed

(a) in the case of the unit agreement by

(i) one or more working interest owners who own in the aggregate more than twenty-five per cent of the total working interests in the area and were included within the group owning sixty-five per cent or more of the total working interests as described in subparagraph (i) of paragraph (a) of subsection (2) of section 170, and

(ii) one or more royalty owners who own in the aggregate more than twenty-five per cent of the total royalty interests in the unit area and were included within the group owning sixty-five per cent or more of the total royalty interests as described in subparagraph (ii) of paragraph (a) of subsection (2) of section 170; or

(b) in the case of the unit operating agreement, by one or more working interest owners who own in the aggregate more than twenty-five per cent of the total working interests in the unit area and were included within the group owning sixty-five per cent or more of the total working interests as described in subparagraph (i) of paragraph (a) of subsection (2) of section 170.

(3) Where a unitization order becomes ineffective under subsection (2), the Committee shall forthwith revoke the order.

Technical
defects in
order

172. A unitization order is not invalid by reason only of the absence of notice or of any irregularities in giving notice to any owner in respect of the application for the order or any proceedings leading to the making of the order.

Amending
the order

173.(1) A unitization order may be amended upon the application of a working interest owner, but before amending a unitization order the Committee shall hold a hearing at which all interested parties shall have an opportunity to be heard.

(2) If the Committee finds that, at the date of the commencement of a hearing of an application for the amendment of a unitization order, one or more working interest owners who own, in the aggregate, sixty-five per cent or more of the total working interests and one or more royalty interest owners who own, in the aggregate, sixty-five per cent or more of the total royalty interests in

the unit area have consented to the proposed amendment, the Committee may amend the unitization order in accordance with the amendment proposed.

Protection
of tract
participat-
ion ratios

174. No amendment shall be made under section 173 that will alter the ratios between the tract participations of those tracts that were qualified for inclusion in the unit area before the commencement of the hearing, and, for the purposes of this section, the tract participations shall be those indicated in the unit agreement when it became subject to a unitization order.

Production
prohibited
except in
accord with
unitization
order

175. After the date on which a unitization order comes into effect and while the order remains in force, no person shall carry on any operations within the unit area for the purpose of drilling for or producing petroleum from the unitized zone, except in accordance with the provisions of the unit agreement and the unit operating agreement.

How per-
centages of
interests
to be
determined

176. The percentages of interests referred to in subsection (1) of section 169, subsection (2) of section 170, subsection (2) of section 171 and subsection (2) of section 173 shall be determined

- (a) as to royalty interests, on a prorated area basis; and
- (b) as to working interests, on the basis of tract participations shown in the unit agreement.

General

Pooled
spacing
unit
included

177.(1) A pooled spacing unit that has been pooled pursuant to a pooling order and on which a well has been drilled may be included in a unit area as a single unit tract and the Committee may make such amendments to the pooling order as it deems necessary to remove any conflict between the provisions of the pooling order and the provisions of the unit agreement, or the unit operating agreement or the unitization order, if any.

(2) Where a pooled spacing unit is included in a unit area pursuant to subsection (1), the provisions of the unit agreement, the unit operating agreement and the unitization order, if any, prevail over the provisions of the pooling order in the event of a conflict, but

- (a) the share of the unit production that is allocated to the pooled spacing unit shall in turn be allocated to the separately owned tracts in the pooled spacing unit on the same basis and in the same proportion as production actually obtained from the pooled spacing unit would have been shared under the pooling order;
- (b) the costs and expenses of the unit operation that are allocated to the pooled spacing unit shall be shared and borne by the owners of the working interests therein on the same basis and in the same propor-

tion as would apply under the pooling order; and

- (c) the credits allocated under a unit operating agreement to a pooled spacing unit for adjustment of investment for wells and equipment thereon shall be shared by the owners of the working interests therein in the same proportion as would apply to the sharing of production under the pooling order.

DIVISION III

APPEALS AND ADMINISTRATION

Appeals

Orders &
 decisions
 final

178.(1) Except as provided in this Division, every decision or order of the Committee is final and conclusive.

(2) Any minute or other record of the Committee or any document issued by the Committee, in the form of a decision or order, shall for the purposes of this section be deemed to be a decision or order of the Committee.

Stated case
 for Supreme
 Court

179.(1) The Committee may of its own motion, or at the request of the Board state a case, in writing, for the opinion of the Trial Division on any question that in the opinion of the Committee is a question of law or of the jurisdiction of the Committee.

(2) The Trial Division shall hear and determine the case stated, and remit the matter to the Committee with the opinion of the Court thereon.

Board may
review
orders of
Committee

180. The Board may, at any time, in its discretion, either on petition of any interested person, or of its own motion, vary or rescind any decision or order of the Committee made under this Part, whether such order is made between parties or otherwise and any order that the Board makes with respect thereto becomes a decision or order of the Committee and, subject to section 181, is binding on the Committee and on all parties.

Appeal to
Supreme
Court

181.(1) An appeal lies from a decision or order of the Committee to the Trial Division on a question of law, on leave therefor being obtained from that Court, in accordance with the practice of that Court, on application made within one month after the making of the decision or order sought to be appealed from or within such further time as that Court may allow.

(2) Where leave to appeal is granted pursuant to subsection (1), any order of the Committee in respect of which the appeal is made shall be stayed until the matter of the appeal is determined.

(3) After the hearing of the appeal the Court shall certify its opinion to the Committee and the Committee shall make any order necessary to comply with that opinion.

(4) Any order made by the Committee pursuant to subsection (4), unless that order has already been dealt with by the Board pursuant to section 180, shall be subject to that section.

Conservation Engineers

Conservation
engineers

182. The conservation engineers necessary for the administration and enforcement of this Part shall be appointed by the Board.

Powers of
conservation
engineer

183. A conservation engineer may at any reasonable time

- (a) enter and inspect any place, premises or structure used in connection with the production, storing, handling, processing, transporting of or the exploration or drilling for petroleum;
- (b) require the production and inspection of any books, records, documents, licences or permits required by this Part or the regulations and make copies thereof; and
- (c) take samples or particulars and carry out any reasonable tests or examinations.

Certificate
of appoint-
ment

184. A conservation engineer shall be furnished by the Board with a certificate of the appointment or designation of the conservation engineer and on entering any place, premises or structure pursuant to the authority of this Part shall, if so required, produce the certificate to the person in charge thereof.

Assistance
to be given
conservation
engineer

185. The owner or person in charge of any place, premises or structure and every person found therein or thereon shall give a conservation engineer all reasonable assistance within the power of the owner or person to enable the

conservation engineer to carry out the duties and functions of the conservation engineer under this Part or the regulations.

Obstruction
or hinder-
ance pro-
hibited

186.(1) No person shall obstruct or hinder any conservation engineer in carrying out the duties or functions of the conservation engineer under this Part or the regulations.

(2) No person shall make a false or misleading statement either orally or in writing to a conservation engineer engaged in carrying out the duties and functions of the conservation engineer under this Part or the regulations.

When danger-
ous operation
detected

187.(1) Where a conservation engineer, on reasonable grounds, is of the opinion that an operation is in contravention of any safety regulation made pursuant to

(a) this Part; or

(b) any Act of the Legislature and made applicable by section 152 of the Federal Act on certain installations within the offshore area

and that continuation of the operation is likely to result in serious bodily injury, the conservation engineer may order that such operation cease or be continued only in accordance with the terms of the order and shall affix at or near the scene of the operation a notice of the order in a form prescribed by the Board.

(2) An order made under subsection (1) may be modified or revoked in accordance with a further order by the Chief Conservation Officer.

(3) The person carrying out the operation to which an order under subsection (1) or (2) makes reference or any person having a pecuniary interest in such operation may by notice in writing request the conservation engineer making the order to refer it to a Provincial Court judge for review and thereupon the conservation engineer shall refer the order to a Provincial Court judge having jurisdiction in the area in which the operation is taking place.

(4) The Provincial Court judge to whom an order is referred pursuant to this section shall inquire into the need for the conservation engineer's order and for that purpose may exercise all the powers of a commissioner under The Public Enquiries Act.

(5) Where an order has been referred to a Provincial Court judge pursuant to this section, the burden of establishing that the order is not needed is on the person who requested that the order be so referred.

(6) The Provincial Court judge to whom an order is referred pursuant to this section may confirm or set aside the order and the decision of the Provincial Court judge is final and conclusive.

(7) No person shall continue an operation in respect of which an order has been made pursuant to this section except in accordance with the terms of

the order of a conservation engineer or the Chief Conservation Officer, or until the order has been set aside by a Provincial Court judge pursuant to this section.

(8) The conservation engineer shall report any order made by the conservation engineer pursuant to this section to the Chief Conservation Officer.

Offences and Penalties

Offences with respect to documents and records

188.(1) A person is guilty of an offence who

- (a) knowingly makes any false entry or statement in any report, record or document required by this Part or the regulations or by any order made pursuant to this Part or the regulations; or
- (b) knowingly destroys, mutilates or falsifies any report or other document required by this Part or the regulations or by any order made pursuant to this Part or the regulations.

(2) A person who produces any petroleum from a pool or field under the terms of a unit agreement within the meaning of Division II, or any amended unit agreement, before the unit agreement or amended unit agreement is filed with the Chief Conservation Officer is guilty of an offence.

(3) A person is guilty of an offence who contravenes any of the pro-

visions of section 165, subsection (2) of section 167, section 185, section 186, subsection (7) of section 187 or any regulation made pursuant to section 144 when the contravention thereof is stated in the regulations to be an offence under this Part.

(4) A person is guilty of an offence who contravenes or fails to comply with

- (a) an order or direction of the Chief Conservation Officer under section 146, 148 or 154;
- (b) an order of the Committee under section 150 or 152; or
- (c) section 154.

(5) No person commits an offence under subsection (1) of section 147 by reason of committing waste as defined in paragraph (f) or (g) of subsection (2) of section 147 unless that person has been ordered by the Committee to take measures to prevent the waste and has failed to comply.

Punishment

189. Every person who is guilty of an offence under this Part is liable

- (a) on summary conviction, to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding one year, or to both; or
- (b) on conviction on indictment, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding five years, or to both.

Order to
comply

190. Where a person is guilty of an offence under this Part, a court may, in addition to any other penalty it may impose, order that person to comply with the provisions of the Part, regulation or order for the contravention of which that person has been convicted.

Continuing
offences

191. Where an offence under this Part is committed on more than one day or is continued for more than one day, it shall be deemed to be a separate offence for each day on which the offence is committed or continued.

Offence by
employee
or agent

192. In any prosecution for an offence under this Part, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused whether or not the employee or agent is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without the knowledge or consent of the accused and that the accused exercised all due diligence to prevent the commission of such offence.

Limitation
period

193. A prosecution for an offence under this Part may be instituted at any time within two years from the time when the subject-matter of the complaint arose.

Evidence

194. In any prosecution for an offence under this Part, a copy of any order or other document purporting to have been made pursuant to this Part or the regulations and purporting to have been signed by the person authorized by this Part or the regulations to make that order or document is, in the absence of any evidence to the contrary, proof of the matters set out therein.

Jurisdiction of judge or justice 195. Any complaint or information in respect of an offence under this Part may be heard, tried or determined by a justice or judge if the accused is resident or carrying on business within the territorial jurisdiction of that justice or judge although the matter of the complaint or information did not arise in that territorial jurisdiction.

Action to enjoin not prejudiced by prosecution 196.(1) Notwithstanding that a prosecution has been instituted in respect of an offence under this Part, the regulations or any order made pursuant to this Part or the regulations, the Board may commence and maintain an action to enjoin the committing of any contravention of this Part, the regulations or any order made pursuant to this Part or the regulations.

(2) No civil remedy for any act or omission is suspended or affected by reason that the act or omission is an offence under this Part.

Regulations

Regulations 197. Subject to section 7, the Lieutenant-Governor in Council may make such regulations not inconsistent with this Part as may be deemed necessary for carrying out the purposes of this Part, and without limiting the generality of the foregoing may make regulations defining and distinguishing more particularly for the purposes of Divisions I and II the expressions "oil" and "gas".

Application

Application 198. This Part applies to every interest or right in petroleum acquired or vested before the coming into force of this section and is binding on Her

Majesty in right of Canada or the province.

Transitional

Operating licences, authorizing, etc.

199.(1) Where an operating licence was issued under subsection (1) of section 3.2 of the Oil and Gas Production and Conservation Act (Canada) and is in force on the coming into force of this section, it shall be deemed to be an operating licence issued by the Board under this Part.

(2) Where, prior to the coming into force of this section, authorization for any work or activity or approval of a development plan was given under subsection (1) of section 3.2 of the Oil and Gas Production and Conservation Act (Canada) or any regulation made under that Act, the authorization or approval shall be deemed to have been given by the Board under this Part.

PART IV

THE OFFSHORE DEVELOPMENT FUND

Definitions

200. In this Part

- (a) "Development Fund" means the account established by section 201; and
- (b) "project" means any work or activity in respect of which costs may be incurred.

Development Fund

Development Fund

201. There shall be established in the accounts of the province an account to be known as the Offshore Development Fund, to which shall be charged all

amounts paid by the Provincial Minister pursuant to this Part.

Agreement with Federal Government

Agreement
with the
Federal
Government

202. The Provincial Minister may, with the approval of the Provincial Government, enter into an agreement with the Federal Minister, having the approval of the Federal Government,

- (a) providing for the criteria for the selection of projects and the procedure to be followed in proposing and approving projects;
- (b) providing for the procedure to be followed in making a payment of amounts pursuant to subsection (1) of section 203 and the terms and conditions of the payment of those amounts or any part thereof;
- (c) restricting the costs in respect of which payment of amounts may be made pursuant to subsection (1) of section 203; and
- (d) providing for any other matter or thing necessary for or incidental to carrying out the purposes and provisions of this Part.

Payments

Power to
make
payments

203.(1) On a request made in accordance with the terms of an agreement entered into pursuant to section 202 for the payment of an amount of money for costs incurred in respect of a project that has been approved by both

Ministers, the Provincial Minister shall, subject to subsections (2) to (4) and the terms of the agreement, pay the amount.

(2) The aggregate amount of all payments made pursuant to subsection (1) shall not exceed the sum of seventy-five million dollars.

(3) No payment shall be made by the Provincial Minister pursuant to subsection (1) in relation to a project unless the Federal Minister has agreed to pay three-quarters of the total costs incurred by both governments in respect of the project.

(4) The Provincial Minister shall not pay an amount of money pursuant to subsection (1) unless the payment is for costs incurred in respect of a project approved and in progress prior to the day that is the later of

(a) April 1, 1993; and

(b) the day on which the cumulative volume of production in the offshore area, measured as having flowed through the first sales meter, has reached an amount equal to 2,400,000 cubic metres of oil or a volume of gas or of a combination of oil and gas that is the energy equivalent thereto, as determined by the Provincial Minister in accordance with the regulations.

Development Fund Committee

Development
Fund

204.(1) There is established by the joint operation of this Act and the

Committee Federal Act a committee to be known as the Development Fund Committee, consisting of four members.

(2) Two members of the Development Fund Committee are to be appointed by each government.

(3) The Development Fund Committee shall monitor and review the implementation of the Development Fund pursuant to this Part.

(4) The Development Fund Committee may be dissolved only by the joint operation of an Act of the Parliament of Canada and an Act of the Legislature.

PART V

GENERAL PROVISIONS, TRANSITIONAL AND COMMENCEMENT

General Provisions

Agreements
under
Federal Act

205. The Minister of Finance of the province or any other Minister or Ministers of the Crown in right of the province as designated by order of the Lieutenant-Governor in Council may enter into agreements respecting the offshore area pursuant to section 98 and Part IV of the Federal Act with the Minister of Finance of Canada or such other Minister or Ministers of the Crown in right of Canada as designated by order of the Governor General in Council.

Transitional Amendments

Transitional

206.(1) If, during the First Session of the Thirty-third Parliament of Canada, Bill C-92 entitled, An Act to Regulate Interests in Petroleum in

Relation to Frontier Lands, To Amend the
Oil and Gas Production and Conservation
Act and to Repeal the Canada Oil and Gas
Act is assented to,

- (a) section 96 of this Act is repealed and the following substituted:

Fund continued
& rates approved
by Board

"96.(1) Part VII of the Canada Petroleum Resources Act applies, with such modifications as the circumstances require, within the offshore area.

(2) The rates fixed by the Federal Minister pursuant to section 80 of the Canada Petroleum Resources Act, as they apply to the offshore area, are subject to approval by the Board.

(3) Notwithstanding subsection (2) of section 78 of the Canada Petroleum Resources Act, one of the members of the Environmental Studies Management Board established by subsection (1) of section 78 of that Act is to be appointed by the Board, on the recommendation of the Provincial Minister.

(4) The Environmental Studies Management Board referred to in subsection (3) shall submit to the Board a copy of every annual report and recommendation submitted to the Federal Minister pursuant to paragraph (d) or (e) of

subsection (1) of section 79 of the Canada Petroleum Resources Act at the same time the report or recommendation is submitted to the Federal Minister."; and

- (b) Paragraph (h) of subsection (5) of section 114 of this Act is repealed and the following substituted:

"(h) any study funded from a revolving fund established under subsection (1) of section 76 of the Canada Petroleum Resources Act, if the study has been completed; and".

Commencement

Commencement

207.(1) This Act or any provision thereof comes into force on a day or days to be fixed by proclamation of the Lieutenant-Governor in Council.

(2) Section 206 of this Act comes into force on the day Part VII of Bill C-92 and section 131 of Bill C-92 mentioned in section 206 of this Act come into force.



CHAPTER 38

AN ACT TO AMEND THE WORKERS'
COMPENSATION ACT, 1983

(Assented to June 17, 1986)

Analysis

Section:	Section:
1. S.2 Amdt. Definitions	S.21.6 Jurisdiction of panels
2. Sections R&S. S.4 Board of Directors S.5 Duties and powers S.6 Chief executive officer S.6.1 Transitional	S.21.7 Board of Directors and Appeal Tribunal S.21.8 Rules of Appeal Tribunal S.21.9 Appeal to Tribunal S.21.10 Liability of Appeal Tribunal members S.21.11 Conflict of interest S.21.12 Annual report to Assembly S.21.13 Transitional
3. S.10 Amdt. Financial power of Commission	6. S.28 Amdt. Coverage for partic- ular workers
4. S.19 Amdt. Exclusive juris- diction	7. S.71 R&S. Compensation not assignable
5. S.21 R&S. & ss. Added PART I.1 Appeals S.21 Workers' Comp- ensation Appeal Tribunal S.21.1 Chairman of Appeal Tribunal S.21.2 Employees S.21.3 Expenses of Appeal Tribunal S.21.4 Jurisdiction of Appeal Tribunal S.21.5 Composition of panels	8. Consequential amend- ments 9. Commencement Schedule

Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

1983 c.48
as amended

1.(1) Paragraph (a) of section 2 of The Workers' Compensation Act, 1983 is repealed and the following substituted:

"(a) "Appeal Tribunal" means the Workers' Compensation Appeal Tribunal established pursuant to section 21;

(a.1) "Board of Directors" means the Board of Directors appointed pursuant to section 4;"

(2) Paragraph (d) of section 2 of the said Act is repealed.

(3) Section 2 of the said Act is amended by adding immediately after paragraph (f) the following:

"(f.1) "director" means a director of the Board of Directors;"

(4) Paragraph (n) of section 2 of the said Act is repealed and the following substituted:

"(n) "injury" means

(i) an injury as a result of a chance event occasioned by a physical or natural cause,

(ii) an injury as a result of a wilful and intentional act, not being the act of the worker,

(iii) disablement,

(iv) industrial disease,
or

(v) death as a result of
an injury

arising out of and in the
course of employment and
includes a recurrence of
an injury and an aggrava-
tion of a pre-existing
condition;".

(5) Subparagraph (iii) of paragraph
(u) of section 2 of the said Act is
repealed and the following substituted:

"(iii) probable income tax
deductions for those
earnings based on
appropriate annual
tables produced by
Revenue Canada;".

2. Sections 4, 5 and 6 of the said
Act are repealed and the following
substituted:

Board of
Directors

"4.(1) There shall be a Board
of Directors responsible for the
administration of this Act, which
shall consist of not less than
seven nor more than eleven members
appointed by the Lieutenant-Gover-
nor in Council, one of whom shall
be appointed Chairman and one of
whom shall be appointed vice-chair-
man.

(2) All members of the Board
of Directors shall be appointed
from representatives of workers,
employers and the public so long as
the number of representatives of

workers is equal to the number of representatives of employers.

(3) The chairman of the Appeal Tribunal and the chief executive officer of the Commission shall be members ex officio of the Board of Directors but shall not vote on any matter.

(4) The terms of office, remuneration, benefits and expenses of the directors shall be determined by the Lieutenant-Governor in Council and such remuneration, benefits and expenses shall be part of the administrative expenses of the Commission.

(5) In the absence of the chairman or where the office of the chairman is vacant or the chairman is unable to act, the powers and duties of the chairman shall be performed by the vice-chairman and where it appears that the vice-chairman acted for the chairman it shall be presumed that the person was acting in the absence or disability of the chairman or where there is a vacancy in the office of the chairman.

Duties and
powers

5.(1) The Board of Directors shall establish policies and programs consistent with this Act and regulations in relation to

- (a) compensation benefits to injured workers and dependents;
- (b) rehabilitation of injured workers; and
- (c) assessments and investments under this Act,

and the policies shall ensure the intent of this Act and regulations is being applied to provide services to injured workers and dependents and shall promote adequate funding for the services through sound financial management.

(2) The Board of Directors shall

- (a) consider and approve annual administrative and operating budgets and appoint auditors to audit the books and accounts of the Commission, in addition to those audits that may be done pursuant to section 11;
- (b) enact by-laws and regulations for the adoption of a seal and for the conduct of the business and affairs of the Commission;
- (c) establish, maintain and regulate advisory committees and their function and composition; and
- (d) review this Act and regulations and recommend to the Minister such changes as it deems advisable.

(3) The Board of Directors may delegate in writing any of the powers of the Board of Directors to a director or directors and the powers may be subject to such limitations, conditions and requirements as may be noted in the delegation.

Chief executive officer

6. The Lieutenant-Governor in Council shall, subject to section 6.1, appoint a chief executive officer of the Commission who shall devote the whole of his or her time to the performance of duties under this Act.

Transitional

6.1 On the commencement of this section the term of office of the three commissioners in office immediately before the commencement of this section expires but the person who immediately before the commencement of this section is the Chairman of the Commission shall be deemed to be appointed chief executive officer of the Commission."

3.(1) Paragraphs (a) and (b) of subsection (1) of section 10 of the said Act are repealed and the following substituted:

"(a) invest any funds arising under this Act and any other monies under its control in accordance with subsection (3) and sell any securities and reinvest the proceeds in accordance with subsection (3) or use the proceeds for any other purposes authorized by this Act;

(b) place any of its funds and moneys on deposit in a chartered bank; and".

(2) Section 10 of the said Act is amended by adding immediately after subsection (2) the following:

"(3) Funds of the Commission may be invested only in investments

and loans in which an insurance company governed by the Canadian and British Insurance Companies Act (Canada) may invest its funds under subsections (1), (2), (5), (6) and (10) of section 63 of that Act."

4.(1) Paragraph (a) of subsection (1) of section 19 of the said Act is amended by striking out the words "or death".

(2) Subsection (2) of section 19 of the said Act is amended by striking out the word and numbers "sections 21 and 22" and substituting "Part I.1".

5. Section 21 of the said Act is repealed and the following substituted:

"PART I.1

APPEALS

Workers' Com-
pensation
Appeal Tribunal

21.(1) There shall be an Appeal Tribunal known as the Workers' Compensation Appeal Tribunal consisting of as many members as may be prescribed, one of whom shall be designated as chairman and one or more shall be designated as vice-chairmen, to be appointed by the Lieutenant-Governor in Council.

(2) Excluding the chairman, there shall be a number of members on the Appeal Tribunal representing workers equal to the number of members representing employers.

(3) The terms of office, remuneration, benefits and expenses of the members of the Appeal Tribunal shall be determined by the Lieutenant-Governor in Council and such remuneration, benefits and expenses shall be part of the

administrative expenses of the Commission.

(4) Upon the expiry of a member's term of office, a member may be reappointed and where a member resigns or the term of office expires, in relation to a matter before the Appeal Tribunal in which the member was involved before the resignation or expiry, the member may continue to exercise the powers and perform the duties as if the member had not resigned or the term had not expired.

Chairman of
Appeal Tribunal

21.1(1) The chairman of the Appeal Tribunal is the chief executive officer and shall preside at all appeals attended by the Chairman.

(2) In the absence of the chairman or where the office of the chairman is vacant or the chairman is unable to act, the powers and duties of the chairman shall be performed by a vice-chairman and where it appears that a vice-chairman acted for the chairman it shall be presumed that the person was acting in the absence or disability of the chairman or where there is a vacancy in the office of the chairman.

Employees

21.2 The Appeal Tribunal may appoint such officers, employees and advisors as it may deem necessary and subject to such guidelines as the Lieutenant-Governor in Council may prescribe, the Appeal Tribunal may establish such classifications, qualifications, terms of employment and benefits in relation to its offi-

cers, employees and advisors as it deems necessary.

Expenses of
Appeal Tribunal

21.3(1) All expenses incurred in the administration of the Appeal Tribunal, including those pursuant to section 21.2, shall be paid out of the Consolidated Revenue Fund and that Fund shall be reimbursed by moneys from the injury fund.

(2) The Appeal Tribunal shall submit to the Minister for approval the annual budget of the Appeal Tribunal.

Jurisdiction of
Appeal Tribunal

21.4(1) Notwithstanding the power of the Commission to reconsider a matter, where the Commission has made a final determination respecting a matter and all the procedures established by the Commission and this Act respecting a rehearing of the matter have been exhausted, the Appeal Tribunal may hear and has exclusive jurisdiction to dispose of all appeals from actions or decisions of the Commission respecting:

- (a) an injured worker's or dependent's entitlement to compensation benefits;
- (b) an injured worker's entitlement to rehabilitation services and benefits;
- (c) provision of medical care;
- (d) an employer's assessments;

- (e) assignment of an employer to a particular class or group;
- (f) an employer's merit or demerit rating.

(2) Subject to sections 21.7 and 22, an order or decision of the Appeal Tribunal is final and conclusive and is not open to question or review in a court of law and no proceedings by or before the Appeal Tribunal shall be restrained by injunction, prohibition or other process or proceedings in a court of law or be removable by certiorari or otherwise into a court of law.

(3) The Appeal Tribunal may for cause reconsider a matter that has been dealt with by it and may rescind, alter or amend a decision or order previously made by it.

(4) The decisions of the Appeal Tribunal shall be upon the real merits and justice of the case and it is not bound to follow strict legal precedent.

Composition
of panels

21.5(1) The chairman may from time to time establish one or more panels of the Appeal Tribunal and in respect of matters referred to a panel by the chairman a panel has and shall exercise the power and authority of the Appeal Tribunal, and two or more panels may proceed with separate matters at the same time.

(2) The chairman shall preside at meetings of the panel of which the chairman is a member and

a vice-chairman shall preside at meetings of all other panels.

(3) A panel consists of the chairman, or a vice-chairman if appointed by the chairman, and one member representative of workers and one member representative of employers and a panel may not proceed or continue with a matter unless the three members are present.

(4) The chairman may refer to a panel any matter that is before the Appeal Tribunal and to the Appeal Tribunal or another panel any matter that is before a panel.

(5) A panel ceases to exist when the matter it is considering is, in the opinion of the person acting as its chairman, completed.

(6) For all the purposes of this Act, a decision of a panel on any matter referred to it is a decision of the Appeal Tribunal.

Jurisdiction
of panels

21.6(1) The decision of a majority of the members of the Appeal Tribunal or of a panel represents the decision of the Appeal Tribunal.

(2) When a question arises whether a matter is one referred to a panel, the question shall be determined by the panel in the first instance, subject to final determination by the chairman of the Appeal Tribunal.

(3) When a panel deals with any aspect of any matter referred to it, all rules and regulations made under this Act and applicable to the Appeal Tribunal in similar

circumstances apply, mutatis mutan-
dis, to a panel.

Board of
Directors and
Appeal Tribunal

21.7(1) Where a matter to be decided by the Appeal Tribunal requires an interpretation of policy and general law prior to a decision being rendered, the Board of Directors shall review and determine the issue or interpretation of the policy and general law and the Tribunal shall consider the matter in light of the interpretation or determination of the Board of Directors.

(2) Where the Board of Directors conducts a review, it shall either hold a hearing and afford the parties likely to be affected by its determination an opportunity to make oral and written submissions or it shall permit the parties likely to be affected by its determination to make written submissions, as the Board of Directors may direct.

(3) The Board of Directors shall give its determination and direction, if any, under this section in writing together with its reasons therefor.

(4) Where the Tribunal makes a decision which in the opinion of the Commission is not consistent with established policy or the intent of this Act, the Board of Directors shall direct a review and determination as set out in subsections (1) to (3).

(5) Pending its determination, the Board of Directors, with respect to the decision that is the subject-matter of the review, may

stay the enforcement or execution of the order made under the decision or may vacate the order if it has been implemented.

Rules of
Appeal Tribunal

21.8(1) The Appeal Tribunal may, subject to approval of the Lieutenant-Governor in Council, in relation to hearings prescribe rules of procedure and evidence and may from time to time order the type and nature of information to be provided by a person to the Appeal Tribunal prior to or during a hearing and that person shall so provide the information to the Appeal Tribunal.

(2) Notwithstanding rules prescribed under subsection (1), the Appeal Tribunal or panel may receive or accept such evidence and information on oath or affirmation, affidavit or otherwise as it deems proper, whether or not that evidence or information is admissible as evidence in a court of law.

(3) For the purposes of any hearing an Appeal Tribunal, and each member thereof, has all the powers that are or may be conferred on a Commissioner under The Public Enquiries Act, and an Appeal Tribunal is deemed to be an "investigating body" for the purposes of The Evidence (Public Investigations) Act, and there shall be full right to examine and cross-examine all witnesses called and to adduce evidence in response and reply, and, without limiting the generality of the foregoing, the provisions of section 3 of The Public Enquiries Act shall apply to all such witnesses.

Appeal to
Tribunal

21.9(1) In relation to a matter referred to in section 21.4 a person may, subject to and in accordance with the regulations, either personally or through an agent acting on the person's behalf with written consent, appeal to the Appeal Tribunal.

(2) Subject to the regulations, the Appeal Tribunal shall

- (a) notify the person appealing a decision of the Commission of the time and place of the hearing by the Appeal Tribunal;
- (b) hear the appeal; and
- (c) upon the conclusion of the hearing, confirm, vary or set aside the finding or decision of the Commission.

(3) For the purpose of making an appeal to the Appeal Tribunal a person may appear before the Appeal Tribunal on his or her own behalf or be represented by counsel or an agent and may accompany and appear with the counsel or agent before the Appeal Tribunal.

(4) Where a person other than a person appealing has an interest in a matter before the Appeal Tribunal, that person has the right to appear before the Appeal Tribunal either personally or as represented by counsel or an agent and shall after indicating in writing to the Appeal Tribunal of an intention to appear be notified of the time and place of the hearing.

(5) If the person appealing to the Appeal Tribunal or a person referred to in subsection (4) fails to attend, in person or by counsel or agent, the hearing of the appeal after being notified in accordance with this section, unless such failure to attend is due to circumstances beyond the person's control and that person has, by written notice, advised the Appeal Tribunal that the person wishes to so attend and sets forth, in the notice, the circumstances that prevent the attendance, the Appeal Tribunal may proceed in such absence to examine into the matter of the appeal and to hear the witnesses, if any, and adjudicate thereon.

(6) The Appeal Tribunal shall as soon as possible after hearing a matter, communicate in writing its finding or decision with reasons to the Commission and to any person who appeared before it forthwith after such finding or decision is made.

Liability of
Appeal Tribunal
members

21.10 No action for damages shall be brought in any court of law against the Appeal Tribunal or a member thereof in respect of anything done by it or the member beyond the jurisdiction as conferred by this Act if it was done in the bona fide belief that it was within the jurisdiction of the Appeal Tribunal or the member.

Conflict of
interest

21.11 No member of the Appeal Tribunal may participate in the hearing of a matter in which that member has a direct personal interest or in which the Chairman determines there is a conflict of interest.

Annual report
to Assembly

21.12 The Appeal Tribunal shall, not later than the thirty-first day of March in each year, submit to the Minister a report of its proceedings under this Act for the preceding calendar year, and the Minister shall lay the report before the Assembly within fifteen days after it is submitted, or if the Assembly is not then sitting, on any of the first fifteen days next thereafter that the Assembly is sitting.

Transitional

21.13(1) An action or decision of the Commission in relation to a matter referred to in section 21.4 made within one year before the commencement of this section may be appealed in accordance with this Part.

(2) Where prior to the commencement of this section a person has in relation to an order or decision requested a hearing before the Board of Commissioners, and there is on the commencement of this section no decision of the Board of Commissioners in relation to that hearing the provisions of this Part shall apply mutatis mutandis to the request and the person is deemed to have appealed to the Appeal Tribunal."

6. Subsection (1) of section 28 of the said Act is amended by striking out paragraphs (c) and (d) and substituting the following:

"(c) volunteer fire brigades or departments located in or serving a municipality and the members thereof;

- (d) independent operators in the logging industry;
- (e) members of the House of Assembly; and
- (f) volunteers engaged in work or measures pursuant to The Emergency Measures Act."

7. Section 71 of the said Act is repealed and the following substituted:

Compensation
not assignable

"71. Except with the approval of the Commission or where there is a court order for maintenance or alimony payments, a sum payable as compensation may not be assigned, charged or attached, nor shall it pass by operation of law except to a personal representative, nor shall any claim be set off against it."

Consequential
amendments

8. The said Act is amended in the manner and to the extent noted in the Schedule.

Commencement

9. This Act or any provision hereof shall come into force on a day to be proclaimed by the Lieutenant-Governor in Council.

SCHEDULE

Section of Act	Amendment
7	The words "Board of Commissioners" are struck out wherever they occur in subsections (1), (2) and (3) and the words "Board of Directors" are substituted.
13	The words "Board of Commissioners" are struck out and the words "Board of Directors" are substituted.
14	The word "commissioner" is struck out and the word "director" is substituted.
15(1)	The word "commissioners" is struck out and the word "directors" is substituted.
15(2)	The words "Board of Commissioners" are struck out, and the words "Board of Directors" are substituted.
16(1)	The words "Board of Commissioners" are struck out, wherever they occur, and the words "Board of Directors" are substituted. The words "one of the commissioners" are struck out and the words "one or more of the directors" are substituted.
16(2)	The word "commissioners" is struck out and the word "directors" is substituted.

Section of Act	Amendment
17(1)	The word "commissioner" is struck out and the word "director" is substituted.
18	The words "Board of Commissioners" are struck out, wherever they occur in subsections (1) and (2), and the words "Board of Directors" are substituted.
22	The words "Board of Commissioners" are struck out and the words "Commission or Appeal Tribunal" are substituted.
24(2)	The words "a commissioner" are struck out and the words "the chief administrative officer" are substituted.
61(3)	The words "Board of Commissioners" are struck out and the words "Board of Directors" are substituted.



CHAPTER 39

AN ACT TO AMEND THE NEWFOUNDLAND PUBLIC SERVICE COMMISSION ACT, 1973

(Assented to June 17, 1986)

Analysis

Section:	Section:
1. S.2(j) Amdt. Definition	4. Schedules 1, 2 & 3 R&S.
2. S.4 R&S. Application of Act	First Schedule Second Schedule
3. S.7(3) R&S. Oath or affirmation	

Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

1973 No.116
as amended

1. Paragraph (j) of section 2 of The Newfoundland Public Service Commission Act, 1973 is amended by adding after the words "any body" the words "or agency".

2. Section 4 of the said Act is repealed and the following substituted:

Application
of Act

"4.(1) Subject to section 5, this Act applies to those portions of the Public Service of the province specified in the First Schedule to this Act and any body or agency deemed to be a portion of the Public Service of the province for the purposes of this Act and added to that Schedule pursuant to this section.

(2) The Lieutenant-Governor in Council may by order

- (a) deem any body or agency to be a portion of the public service of the province for the purposes of this Act; and
- (b) add that body or agency deemed under paragraph (a) to those portions of the Public Service specified in the First Schedule to this Act.

(3) An order made under this section is subordinate legislation for the purposes of The Statutes and Subordinate Legislation Act.

(4) An order made under this section may be made with retroactive effect to a date stated in the order which shall not be earlier than the commencement of this Act."

3. Subsection (3) of section 7 of the said Act is repealed and the following substituted:

"(3) Each Commissioner shall before entering upon his or her duties take and subscribe before the Clerk of the Executive Council the oath or affirmation set out in the Second Schedule to this Act, and that subscribed oath or affirmation shall be retained by the Clerk of the Executive Council as part of the records of the Clerk's office."

4. The First Schedule, the Second Schedule and the Third Schedule to the said Act are repealed and the following substituted:

"First Schedule

1. The Department of the Auditor General.
2. The Department of Career Development and Advanced Studies.
3. The Department of Consumer Affairs and Communications.
4. The Department of Culture, Recreation and Youth.
5. The Department of Development and Tourism.
6. The Department of Education.
7. The Department of Environment.
8. The Executive Council Office.
9. The Department of Finance.
10. The Department of Fisheries.
11. The Department of Forest Resources and Lands.
12. The Department of Health.
13. The Department of Justice.
14. The Department of Labour.
15. The Department of Mines and Energy.
16. The Department of Municipal Affairs.
17. The Department of Public Works and Services.
18. The Department of Rural, Agricultural and Northern Development.
19. The Department of Social Services.
20. The Department of Transportation.
21. The Newfoundland Public Service Commission.
22. The Public Libraries Board.
23. The Fishing Industry Advisory Board.
24. The Newfoundland Liquor Licensing Board.
25. The Newfoundland Medical Care Commission.
26. The Alcohol and Drug Dependency Commission of Newfoundland and Labrador.

Second Schedule

I, A.B., of do hereby solemnly swear (or solemnly, sincerely and truly declare and affirm) that I will faithfully and honestly fulfil the duties which devolve upon me as a member of The Newfoundland Public 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 a member of the Commission."

(In the case where an oath is taken add "So help me God")."



CHAPTER 40

AN ACT TO AMEND THE PETROLEUM AND
NATURAL GAS ACT

(Assented to June 17, 1986)

Analysis

Section:

Section:

- | | |
|--|---|
| 1. S.2 Amdt.
Definitions | S.24 Incremental
royalty |
| 2. Heading Added
Part I
Petroleum and Natural
Gas | S.25 Royalty agreement
S.26 Payment in kind
S.27 Delivery of
petroleum |
| 3. S. 9 Amdt.
Regulations | S.28 Determining equi-
valent volume |
| 4. S.10 Amdt.
Fees, etc. to bear
interest | S.29 Storage facili-
ties |
| 5. Ss.Added
Part II
Royalties | S.30 Regulations
S.31 Notice to pay
Crown |
| S.21 Definition | S.32 Reports, returns
& audit |
| S.22 Royalty
generally | S.33 Failure to pay
interest |
| S.23 Basic royalty | S.34 Assessment |
| | 6. Commencement |

Be it enacted by the Lieutenant-Governor and House of
Assembly in Legislative Session convened as follows:

RSN 1970
c.294
as amended

1. Section 2 of The Petroleum and
Natural Gas Act is amended

(a) by adding after paragraph (b)
the following:

"(b.1) "gas" means natural gas
and includes all sub-
stances, other than

oil, that are produced
in association with
natural gas;"

(b) by adding immediately after
paragraph (e) the following:

(e.1) "oil" means

(i) crude petroleum re-
gardless of gravity
produced at a well
head in liquid form,

and

(ii) any other hydrocarbons,
except coal and gas, and,
without limiting the gene-
rality of the foregoing,
hydrocarbons that may be
extracted or recovered
from deposits of oil sand,
bitumen, bituminous sand,
oil shale or from any
other types of deposits on
the seabed or subsoil
thereof of the offshore
area;" and

(b) by repealing paragraph (f) and
by substituting the following:

(f) "petroleum" in addition to
its ordinary meaning,
includes oil and gas;"

2. The said Act is amended by add-
ing immediately after section 2 and be-
fore section 3 the following:

"PART I

Petroleum and Natural Gas"

3.(1) Paragraph (k) of subsection

(1) of section 9 of the said Act is repealed.

(2) Paragraph (1) of subsection (1) of section 9 of the said Act is amended by striking out the words and the comma "the payment of royalties,".

4. Subsection (1) of section 10 of the said Act is amended by striking out the comma and the word ", royalties".

5. The said Act is amended by adding immediately after section 20 the following:

"Part II

Royalties

Definition

21. In this Part "lease" includes a similar instrument issued under The Canada-Newfoundland Atlantic Accord Implementation (Newfoundland) Act.

Royalty generally

22. A royalty determined under this Part is reserved to the Crown in right of the province on all petroleum recovered pursuant to this Act.

Basic royalty

23. Petroleum produced pursuant to a lease under this Act is subject to, and each holder of a share in such lease is liable for and shall pay to Her Majesty in right of the province, a basic royalty in an amount and in a manner as prescribed by the regulations.

Incremental royalty

24. Each holder of a share of a lease is liable for and shall pay to Her Majesty in right of the province an incremental royalty in a percentage as may be prescribed by the

regulations on the net profit of that holder for each royalty year received from the petroleum produced under a lease.

Royalty
Agreement

25.(1) A basic royalty, incremental royalty or a royalty in kind reserved to the Crown in right of the province on petroleum may be in accordance with an agreement entered into from time to time by the Lieutenant-Governor in Council with the holder of a lease.

(2) In the event that an agreement referred to in subsection (1) is entered into by the Lieutenant-Governor in Council, that agreement shall have the full force and effect of law as if set out specifically in this Act and shall prevail notwithstanding any other provision of this Act.

Payment
in kind

26. The Minister may give notice to the holder owner of a lease not later than ninety days prior to the beginning of the royalty year, requiring payment in kind during that royalty year payable under this Part for that royalty year.

Delivery of
petroleum

27. On receipt of a notice under section 26 the aggregate of the royalties payable under a lease for that royalty year under this Part shall be estimated and paid by delivery of an equivalent volume of petroleum, as specified by the Minister, of a condition and quality acceptable to the Minister, at the time and place specified in the notice, in equal monthly instalments over that royalty year, subject to an audit at the end of that royalty

year and to an adjustment, if necessary, payable in money only.

Determining
equivalent
volume

28. The equivalent volume of petroleum to be delivered under section 27 shall be determined by converting the aggregate of the royalties payable to an equivalent volume of petroleum using the fair market values determined by the Minister under the regulations.

Storage
facilities

29. The Minister shall provide, without cost to the interest owner, all tanks or other storage facilities necessary to accept payment of an equivalent volume of petroleum under this Part.

Regulations

30.(1) The Lieutenant-Governor in Council may make regulations

- (a) prescribing the basic royalty on petroleum and the amount of that royalty;
- (b) prescribing the incremental royalty on petroleum and the amount of that royalty;
- (c) prescribing that the quantity of the royalty on petroleum be calculated at a place other than the place where the petroleum is first measured after it is recovered;
- (d) prescribing that the royalty on petroleum be delivered to the Crown in right of the province at a place other than that at which its quantity is calculated;

- (e) authorizing the Minister to determine any component or value in the calculation of the royalty on a petroleum;
- (f) respecting the circumstances under which the quantity of the royalty on petroleum shall be calculated on all or any of the products obtained by processing the petroleum or by reprocessing any of those products instead of on the petroleum;
- (g) respecting the waiver or variation of all or part of the royalty on petroleum;
- (h) defining the term "net profit" and "royalty year" as used in this Part; and
- (i) prescribing a royalty in kind, its terms and conditions and its calculation and delivery.

(2) Regulations made under this section may be related to a specified agreement or class of agreements.

(3) If regulations are made under this section respecting the calculation of royalty on petroleum recovered pursuant to an agreement subject to a unit agreement or unit operation order, the regulations operate notwithstanding anything in the unit agreement or unit operation order.

Notice to
pay Crown

31.(1) In this section "debtor" means a person indebted to the Crown in right of the province in respect of royalty on petroleum.

(2) If the Minister has knowledge or suspects that a person is or is about to become indebted or liable to make any payment to a debtor, the Minister may, by a notice, require that person to pay the money otherwise payable to the debtor to the Minister on account of the liability in respect of royalty on petroleum to the Crown in right of the province.

(3) If a notice is given to a person pursuant to subsection (2), the requirement to pay is applicable to all future payments by that person to the debtor until the liability in respect of royalty on petroleum to the Crown in right of the province is fully satisfied.

(4) The receipt by the Minister of money paid as required under subsection (2) or (3) is a good and sufficient discharge of the liability to the debtor to the extent of the payment.

(5) A person who discharges any liability to the debtor without complying with a notice given to that person pursuant to subsection (2) is liable to pay to the Minister an amount equal to the liability discharged or the amount that person was required to pay to the Minister, whichever is the lesser.

(6) If a person carries on business under a name or style other than that name, a notice to that person under subsection (2)

(a) may be addressed to the name or style under which that person carries on business; and

(b) is validly given if it is left with an adult person employed at the place of business of the addressee.

(7) If two or more persons carry on business as a partnership, a notice to those persons under subsection (2)

(a) may be addressed to the partnership name; and

(b) is validly given if it is given to one of the partners or left with an adult person employed at the place of business of the partnership.

Reports,
returns and
audit

32. Parties required by this Part to file reports and returns respecting royalties shall file such reports and returns in the form and manner prescribed by the regulations, shall submit such information or documentation in connection therewith as may be prescribed by the regulations and are subject to such audit or examination as may be prescribed by the regulations.

Failure to
pay interest

33. The Minister has the same remedies and powers in relation to the failure to pay interest owing to the Crown in right of the province under this Act that the Minister has in relation to the failure to pay the principal amount on which the interest is computed.

Assessment

34.(1) The Minister may at any time examine a report or return, assess or reassess the royalty payable for any period and give a notice of such assessment to the party required to pay royalty, but liability for royalty is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.

(2) For the purposes of this Part,

(a) subject to being varied or vacated on an objection or appeal and subject to a reassessment, an assessment is valid and binding notwithstanding any error, defect or omission in it; and

(b) an assessment includes a reassessment.

(3) A party who objects to an assessment may, within ninety days from the date of mailing of the notice of assessment, give a notice of objection to the Minister by registered mail setting out the reasons for the objection and all the relevant facts.

(4) On receipt of a notice of objection, the Minister, with all due dispatch, shall reconsider the assessment and confirm, vary or vacate the assessment and give notice thereof to the objector by registered mail.

(5) Where the Minister confirms or varies an assessment under subsection (4) or fails, within ninety days after the date of

mailing of the notice of objection, to notify the party objecting that the Minister has vacated, varied or confirmed the assessment, that party may appeal to the Trial Division to have the assessment vacated or varied.

(6) No appeal under subsection (5) may be instituted after the expiration of ninety days from the date of mailing of a notice confirming or varying an assessment or, where no such notice is given, after the expiration of one hundred and eighty days from the date of mailing of the notice of objection.

(7) Where an appeal is taken under subsection (5), the Trial Division shall forthwith give notice of appeal to the Minister who, forthwith after receiving the notice, shall forward to the Court copies of all reports or returns, notices of assessment, notices of objection and other documents, if any, that are relevant to the appeal.

(8) The Trial Division may dispose of an appeal under subsection (5) by dismissing it or by allowing it and vacating or varying the assessment and may make such orders as are necessary for giving effect to any such disposition.

(9) Proceedings in an appeal to the Trial Division under subsection (5) shall be held in camera on request made to the Court by a party to the appeal."

Commencement

6. This Act comes into force on a day to to be proclaimed by the Lieutenant-Governor in Council.



CHAPTER 41

AN ACT TO AMEND THE MEMORIAL
UNIVERSITY ACT

(Assented to June 17, 1986)

Analysis

Section:

1. S.37 R&S.
Limit of expendi-
tures

Section:

2. S.56(d) Amdt.
Composition of
Senate

Be it enacted by the Lieutenant-Governor and House of
Assembly in Legislative Session convened, as follows:

RSN 1970
c.231
as amended

1. Section 37 of The Memorial University Act is amended by renumbering that section as subsection (1) and by adding immediately after subsection (1) the following:

"(2) Notwithstanding subsection (1), the Board may, without the consent of the Lieutenant-Governor in Council, incur any liability or make any expenditure not to exceed the amount of one-quarter of one percent of the total of

- (a) any grant made to the University by the Legislature; and
- (b) estimated revenue of the University from other sources for the current year."

2. Paragraph (d) of section 56 of the said Act is amended by striking out the word "eight" and substituting the word "twelve".

