

Court Administration

APR 28 2015

Halifax, N.S.

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**Hand Delivered**

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The Honourable Justice Michael J. Wood  
Supreme Court of Nova Scotia  
The Law Courts  
1815 Upper Water Street  
Halifax NS B3J 3C8

My Lord:

**Re: Municipality of the District of Guysborough v. The Heirs at Law of Joseph Fogarty,  
James P. Fogarty and Frank Fogarty – Hfx. No. 431696**

I write in response to your Lordship's letter of April 14, 2015. Please accept this letter as the Applicant's brief regarding the *Land Actions Venue Act*, R.S.N.S. 1989, c. 247 and the *Public Trustee Act*, R.S.N.S., c. 379.

At the outset, I note that Mr. Muise has advised that he is not representing Ms. Campbell and that Ms. Campbell will be representing herself at the Hearing. Accordingly, we have copied her on this correspondence. Additionally, although Mr. James P. Fogarty remains named in the style of cause, he has not directly participated in the proceedings to date and is a descendant of Michael Vincent Fogarty represented by Mr. Frank Fogarty.

### ***The Land Actions Venue Act***

With respect to the *Land Actions Venue Act*, the Municipality of the District of Guysborough ("MODG") submits that since the Order of Justice Arnold dated January 21, 2015 orders that this matter be heard in Halifax, that the action need not be heard in Guysborough as "the Court or Judge" has ordered otherwise in accordance with s. 2 of the *Land Actions Venue Act* (**Tab 1**).

Additionally, Halifax appears to be the most convenient locale for the most active claimants, lead by Frank Fogarty.

### ***The Public Trustee Act***

MODG provides the following submissions for the Court's assistance and not in furtherance of any position regarding the service of the Public Trustee.

Thus far, this proceeding has been conducted on the basis that the *Expropriation Act* provides a complete code governing the procedure for determining the interest in land. Extensive work has been done to locate and notify the potential heirs of Joseph Fogarty. MODG submits that the Court may consider these efforts and whether additional effort on the part of the Public Trustee would be practical or proportional in the circumstances of this case.

The purpose of s. 17 is to finally adjudicate for all purposes of the *Expropriation Act* the identity of all interest holders in the land expropriated and the nature of that interest, as is set out in s. 17(4) (**Tab 2**):

*17(4) An adjudication made by the Court for the purposes of this Act shall be deemed to be a final judgment of the Court and, subject to variation on appeal, if any, shall finally determine for all purposes of this Act what persons had any right, estate or interest in the land expropriated and the nature and extent thereof.*

An order under s. 17 of the *Expropriation Act* provides a final determination as to the state of title and as to what persons had a right in the land such that they would be entitled to compensation under the *Expropriation Act*.

Section 17(2) of the *Expropriation Act*, R.S.N.S., 1989 c. 156 provides:

*(2) An application under this Section shall in the first instance be ex parte and the Court shall fix a time and place for the hearing of the persons concerned and give directions as to*

*(a) the persons who are to be served, the notice of the hearing, the contents of the notice and the manner of service thereof;*

*(b) the material and information to be submitted by the expropriating authority or any other person; and*

*(c) such other matters as the Court considers necessary.*

Additionally, the *Expropriation Act* provides the Court with the authority to appoint a trustee where the persons entitled to compensation are unknown or missing:

*Appointment of guardian ad litem*

*64 (1) The Court may, where a trustee, guardian or other person representing any person under a disability or any other persons including issue unborn is unable or unwilling to act on his or their behalf or where any such person or persons including issue unborn are not so represented or where the person or persons entitled to compensation are unknown or missing, after such notice as the Court may direct, appoint a trustee, guardian or other person ad litem to act on his or their behalf for the purposes of this Act.*

*(2) The Court in making any appointment under subsection (1) may give such directions as to the disposal, application or investment of any compensation payable under this Act as it deems necessary to secure the interests of all persons having a claim thereto.*

*(3) Any contract, agreement, release or receipt made or given by any person appointed under subsection (1) and any conveyance or other instrument made or given in pursuance of such contract or agreement is binding for all purposes upon the person by whom, and any person or persons including issue*

*unborn on behalf of whom, such contract, agreement, release or receipt is made or given.*

*(4) For the purposes of this Section, the Public Trustee is a person eligible for appointment by the Court and may, in his discretion, of his own initiative, make application for such appointment.*

Section 64(1) provides for trustees or guardians to be appointed in three situations: when a trustee or guardian representing a person under legal disability is unable or unwilling to act; when a person under legal disability is unrepresented; or where the persons entitled to compensation are unknown or missing.

The MODG would submit that the only situation in s. 64(1) that appears to be applicable in this case is "where the person or persons entitled to compensation are unknown or missing".

The Court may wish to consider whether entitlement to compensation depends on a person being found to have an interest in land. Section 24 of the *Expropriation Act* which provides that: "the statutory authority shall pay the owner compensation as is determined in accordance with this Act."

Therefore the appointment of a trustee under s. 64 of the *Expropriation Act* may depend on the Court finding first in s. 17(1) that an unknown person has an interest in land. Until such time as there is a determination of the state of title in favour of an unknown or missing person, there is no missing or unknown person entitled to compensation. Accordingly, the *Expropriation Act* does not appear to contemplate the involvement of the Public Trustee on a s. 17 application to advocate for potential property interests.

On its face, the *Public Trustee Act* does not appear to deal with the settling of the question of title to property. Rather, the *Public Trustee Act* appears to contemplate that the specifically known property of specifically known persons (albeit missing persons) be held by the Public Trustee until the property is either claimed or until seven years pass.

The *Public Trustee Act* (**Tab 3**) defines a "missing person" and "property" in s. 2 as follows:

*(e) "missing person" means a person who cannot be found after all reasonable efforts have been made to locate him and includes a person who dies intestate or intestate as to some part of his estate without leaving any known heir-at-law living in the Province or any heir-at-law who can be readily communicated with living elsewhere or where the only heir-at-law is an infant or where Her Majesty in right of the Province has an interest in the estate or proceeds thereof;*

*(g) "property" means real and personal property;*

The Court may wish to consider whether the purpose of the Public Trustee is to litigate property claims or to care for the ascertained property of missing persons.

Section 11 of the *Public Trustee Act* provides that the Public Trustee is to be served with notice "of each application made to a court in respect of the property or estate of a missing person" (emphasis added).

Section 12 provides that the Public Trustee, after an investigation may take possession of the "property" and effects of a missing person pending a court order. Section 13 permits the Court to declare a person to be a "missing person" and then appoint the Public Trustee as a trustee of the "property" of that person.

Under Section 14(1) the Public Trustee may make certain payments from the "property" of a "missing person". Two years after a person is declared to be missing, the Court may order that their estate be distributed, Section 14(2).

The *Expropriation Act* appears to allow for the engagement of the Public Trustee where missing person is entitled to compensation. The *Public Trustee Act* seems to operate to a similar effect.

The affidavit evidence suggests that as a matter of law there are nine branches of the Fogarty family who may have legal entitlement to the land. After extensive advertising and publicity (Fogarty's Cove is the subject of a Stan Roger's song) only one branch of the family has come forward apart from Florence Kathleen Patricia Campbell. Her interest is no different from that of the eight branches of the family not represented by Frank Fogarty.

The branch represented by Frank Fogarty claim their interest by operation of law, but also distinguishes itself through its claim based upon usage and adverse possession.

We have no objection if the Court wishes to notify the Public Trustee to determine if it would represent the other eight branches of the Fogarty family.

#### CONCLUSION

In sum, MODG submits that the *Land Actions Venue Act* does not require a hearing in Guysborough as there is a Court Order for the hearing of this matter in Halifax.

The MODG hopes that these submissions may be of assistance to the Court in determining whether or not service of the Public Trustee is required.

All of which is respectfully submitted,



Robert G. Grant

RGG/adk

c: Client  
Frank Fogarty  
James P. Fogarty  
Florence Kathleen Patricia Campbell

Tab 1



# Land Actions Venue Act

CHAPTER 247

OF THE

REVISED STATUTES, 1989

amended 1996, c. 23, ss. 14, 15

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## An Act Respecting the Trial of Actions Involving the Title to Land

### Short title

**1** This Act may be cited as the *Land Actions Venue Act*. R.S., c. 247, s. 1.

### "justice centre area" defined

**1A** In this Act, "justice centre area" means a justice centre area established by the Minister of Justice pursuant to the *Judicature Act*. 1996, c. 23, s. 14.

### Venue of action relating to land

**2** All actions for trespass to lands or in which possession or recovery of lands is sought, and all actions in which the title to lands is in issue, shall, unless the court or a judge otherwise orders, be tried in the justice centre area in which the lands lie, and if the lands lie in more than one justice centre area, then in any of the justice centre areas in which any part of the lands lie. R.S., c. 247, s. 2; 1996, c. 23, s. 15.



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Tab 2





# Expropriation Act

CHAPTER 156

OF THE

REVISED STATUTES, 1989

amended 1992, c. 11, s. 36; 1995-96, c. 19; 2001, c. 6, s. 106;  
2006, c. 16, s. 7

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## An Act Respecting Expropriation

PART I

SHORT TITLE

### Short title

1 This Act may be cited as the Expropriation Act. *R.S., c. 156, s. 1.*

PURPOSE OF ACT

### Purpose of Act

2 (1) It is the intent and purpose of this Act that every person whose land is expropriated shall be compensated for such expropriation.

(2) Further, it is the intent and purpose of this Act that where a family home is expropriated the position of the owner in regards to compensation shall be such that he will be substantially in the same position after the expropriation as compared with his position before the expropriation.

(3) Recognizing that strict market value is not in all cases a true compensation for a family home that is expropriated since it may not provide equivalent accommodation to the owner of the family home,

this Act shall be interpreted broadly in respect of the expropriation of a family home so that effect is given to the intent and purpose set forth in subsection (2).

(4) The protection given by subsections (2) and (3) shall not extend to any person whose land is a money asset or investment and not a family home. *R.S., c. 156, s. 2.*

## INTERPRETATION

### Interpretation of Act and service of documents

3 (1) In this Act,

(a) "appraisal report" is a written report which follows and would meet the requirements and standards adopted by The Appraisal Institute of Canada for such reports;

(aa) "Board" means the Nova Scotia Utility and Review Board;

(b) "Court" or "Supreme Court" means the Trial Division of the Supreme Court and includes a judge thereof whether sitting in court or in chambers;

(c) "expropriate" means the taking of land without the consent of the owner by an expropriating authority in the exercise of its statutory powers but does not include a reservation under Section 13 of the Public Highways Act or a designation under Section 106 of the Environment Act;

(d) "expropriating authority" means Her Majesty in right of the Province and in all other cases any person or body empowered by statute to expropriate land;

(e) "expropriation documents" means those documents required to be deposited in the office of a registrar of deeds pursuant to Section 11;

(f) "family home" means the home which is the home of the owner held by him in fee simple or to which he holds the equity of redemption and is used by him for his family residence together, with the land immediately appurtenant thereto, not exceeding one and one-half acres, and any immediately appurtenant outbuildings;

(g) "former Expropriation Act" means Chapter 96 of the Revised Statutes, 1967;

(h) "injurious affection" means

(i) where a statutory authority acquires part of the land of an owner,

(A) the reduction in market value thereby caused to the remaining land of the owner by the acquisition or by the construction of the works thereon or by the use of the works thereon or any combination of them, and

(B) such personal and business damages, resulting from the construction or use, or both, of the works as the statutory authority would be liable for if the construction or use were not under the authority of a statute,

(ii) where the statutory authority does not acquire part of the land of an owner,

(A) such reduction in the market value of the land of the owner, and

(B) such personal and business damages, resulting from the construction and not the use of the works by the statutory authority, as the statutory authority would be liable for if the construction were not under the authority of a statute,

and for the purposes of subclause (i), part of the land of an owner shall be deemed to have been acquired where the owner from whom land is acquired retains land contiguous to that acquired or retains land of which the use is enhanced by unified ownership with that acquired;

(i) "land" includes any estate, term, easement, right or interest in, to, over or affecting land;

(j) "owner" includes a mortgagee, tenant, registered judgment creditor, a person entitled to a limited estate or interest in land, a guardian or trustee of an incompetent person or of a person incapable of managing his affairs, and a guardian, executor, administrator or trustee in whom land is vested;

(k) "prescribed" means prescribed by the regulations made under this Act;

(l) "purchase-money mortgage" means a mortgage given by a purchaser of land to the vendor of the land or his nominee as security for the payment of all or part of the consideration for the sale;

(m) "registered judgment creditor" means a creditor who has obtained a judgment and registered it in accordance with the provisions of the Registry Act or the Land Registration Act;

(n) "registered owner" means an owner of land whose interest in the land is defined and whose name is specified in an instrument in the registry of deeds office, and includes a person shown as a tenant of land on the last revised assessment roll and also includes a person shown as the owner of any registered interest in the parcel register established pursuant to the Land Registration Act;

(o) "security holder" means a person who has an interest in land as security for the payment of money and includes a vendor under an agreement of purchase and sale;

(p) "statutory authority" means Her Majesty in right of the Province or any person or body empowered by statute to expropriate land or cause injurious affection;

(q) "tenant" includes a lessee or occupant occupying premises under any tenancy whether written, oral or implied.

(2) Any document required by this Act to be served may be served personally or by registered mail addressed to the person to be served at his last known address, or, if that person or his address is unknown, by publication once a week for three weeks in a newspaper having general circulation in the locality in which the land concerned is situate and service shall be deemed to be made,

(a) in the case of service by registered mail, on the fifth day after the day of mailing; and

(b) in the case of service by publication, on the date of the third publication. *R.S., c. 156, s. 3; 1992, c. 11, s. 36; 1995-96, c. 19, s. 1; 2001, c. 6, s. 106; 2006, c. 16, s. 7.*

### **Application of Act and conflict with other Acts**

4 (1) Notwithstanding any general or special Act, where land is expropriated or injurious affection is caused by a statutory authority, this Act applies.

(2) The provisions of any general or special Act providing procedures with respect to the expropriation of land or the compensation payable for land expropriated or for injurious affection shall be deemed to refer to this Act and not to the Act in question.

(3) Where there is conflict between a provision of this Act and provisions of any other general or special Act, the provision of this Act prevails. *R.S., c. 156, s. 4.*

### **Act binds Crown**

5 This Act binds Her Majesty in right of the Province. *R.S., c. 156, s. 5.*

## **PART II**

### **EXPROPRIATION**

#### **Acquisition and Abandonment of Land**

#### **Expropriation by statutory authority**

6 Where a statutory authority desires to expropriate land, it shall be expropriated in accordance with the provisions of this Part but only for the purposes authorized by its statute and to the extent set forth therein. *R.S., c. 156, s. 6.*

#### **Approval by approving authority**

7 (1) Notwithstanding Section 6, an expropriating authority shall not expropriate land without the approval of the approving authority.

(2) Any expropriation of land without the approval of the approving authority shall be null and void.

(3) Notwithstanding subsection (2), nothing herein contained prevents an expropriating authority from expropriating anew land forming part of an expropriation that is null and void so long as the new expropriation is in accord with this Act.

(4) The Governor in Council may make regulations concerning the requirements of approval by the approving authority and the documents necessary to evidence the same. *R.S., c. 156, s. 7.*

#### **"approving authority" defined**

8 For the purposes of this Act, "approving authority" means

(a) the Governor in Council in respect of land expropriated by

(i) Her Majesty in right of the Province,

(ii) the Nova Scotia Power Corporation,

- (iii) Maritime Telegraph and Telephone Company Limited,
- (iv) the Halifax-Dartmouth Bridge Commission;
- (b) the municipal council in respect of land expropriated by a municipality;
- (c) the town council in respect of land expropriated by a town;
- (d) the village commissioners in respect of land expropriated by a village;
- (e) the appropriate city council in respect of land expropriated by
  - (i) the City of Halifax,
  - (ii) the City of Dartmouth,
  - (iii) the City of Sydney;
- (f) the city council of Halifax in respect of land expropriated by the Halifax Water Commission;
- (g) the elected political body to which it is responsible in respect of land expropriated by any corporation, commission or body not coming within the above clauses, except that in the case of Her Majesty in right of the Province, the Governor in Council; and
- (h) any case not provided for herein, the Attorney General. *R.S., c. 156, s. 8.*

### **Expropriation by Crown**

9 (1) Notwithstanding any special or general Act, where Her Majesty in right of the Province desires to expropriate land a request shall be made to the Governor in Council for approval of the expropriation by the appropriate Minister or person requesting the same and, upon approval by the Governor in Council, the Attorney General shall be the expropriating authority.

(2) The Governor in Council may make regulations setting forth the nature, type and amount of information required to consider a request for expropriation under subsection (1). *R.S., c. 156, s. 9.*

### **Power of Crown to expropriate**

10 (1) Her Majesty in right of the Province may expropriate land

- (a) for any purpose for which a Minister or the Governor in Council is authorized under a specific Act or the former Expropriation Act to expropriate lands;
- (b) to implement or carry out or effect an agreement entered into between the Province and the Government of Canada or a city, town or municipality or any combination thereof if the agreement is financed from public funds;
- (c) for any public work;
- (d) for any purpose that is a public purpose.

(2) For the purpose of this Section, "public work" includes highways, roads and bridges, public buildings, and all other works and property, whether or not of the kind hereinbefore mentioned, belonging to the Province, and also all other works and property acquired, constructed, extended, enlarged, repaired, equipped or improved at the expense of the Province or for the acquisition, construction, repair, extension, enlargement or improvement of which any public money is appropriated by the Legislature, and every work required for any such purpose but not any work for which money is appropriated as a subsidy only. *R.S., c. 156, s. 10.*

### **Expropriation document**

11 (1) Where a statutory authority has authority to expropriate land and it is desired to expropriate the same, the expropriating authority shall deposit at the office of the registrar of deeds for the registration district in which the land is located a document or documents setting forth

- (a) a description of the land;
- (b) a plan of the land;
- (c) the nature of the interest intended to be expropriated and whether such interest is intended to be subject to any existing interest in the land;
- (d) the statutory purpose for which the land is expropriated; and
- (e) a certificate of approval executed by the approving authority or a true copy thereof.

(2) Upon the documents being deposited at the office of the appropriate registrar of deeds

- (a) the land expropriated becomes and is absolutely vested in the expropriating authority; and
- (b) any other right, estate or interest is as against the expropriating authority, or any person claiming through or under the expropriating authority, thereby lost to the extent that such right, estate or interest is inconsistent with the interest expropriated.

(3) In the case of an omission, misstatement or erroneous description in an expropriation document deposited under this Section, the expropriating authority may deposit in the proper registry of deeds office a document replacing or amending the original document and signed by the expropriating authority, and a document registered under this subsection shall be marked to show the nature of the replacement or amendment and shall have the same force and effect as, and shall be in substitution for, the original document to the extent that such document is replaced or amended thereby.

(3A) In the case of an interest registered pursuant to the Land Registration Act, documents shall be recorded at the land registration office in the parcel register of the interest being expropriated and the registrar shall establish a new register for the interest expropriated.

(4) Where a document purports to have been signed by an expropriating authority under this Section, it shall be presumed to have been signed by the expropriating authority without proof of the signature or official character of the person appearing to have signed it, unless otherwise directed by a court or the Board.

(5) At any time after the expropriating authority deposits the expropriation documents in accordance with subsection (1), it may in writing request the owner to provide it with all information of which the owner has knowledge relating to any interest in the land expropriated and if the owner does not provide such information within thirty days after the written request then the period for serving documents and offering compensation under Sections 13 and 15 shall be increased by one day for each two days delay on the part of the owner without affecting the provisions contained in Section 13 for entering into possession.

(6) The Governor in Council may make regulations as to the form and the contents of the written request referred to in subsection (5).

(7) Notwithstanding Sections 13, 14 and 15, where the Attorney General is of the opinion that the physical possession or use of any land expropriated by an expropriating authority, including himself, is immediately required in the public interest, he may by order authorize the expropriating authority, including himself, to take physical possession of the land expropriated or to use the land to the extent specified in the order and as of the date specified in the order. *R.S., c. 156, s. 11; 2001, c. 6, s. 106.*

### **Agreement with owner**

12 A statutory authority has the authority to make and form an agreement with an owner in respect of any claim of the owner under this Act, including any costs of the owner. *R.S., c. 156, s. 12.*

### **Offer to registered owner if no agreement**

13 (1) In this Section, "registered owner" means a known registered owner.

(2) Where no agreement as to compensation has been made with the owner, the expropriating authority shall, within ninety days after the deposit of the expropriation document under Section 11 and before taking possession of the land, serve upon the registered owner

(a) a true copy of the expropriation documents;

(b) an offer of an amount in full compensation for his interest; and

(c) where the registered owner is not a tenant, a statement of the total compensation being offered for all interests in the land,

excepting compensation for business loss for which the determination is postponed under subsection (1) of Section 29.

(3) The expropriating authority shall base its offer of compensation made under subsection (2) upon a report appraising the market value of the lands being taken and damages for injurious affection, and shall serve a copy of the appraisal report upon the owner at the time the offer is made.

(4) The expropriating authority may, within the period mentioned in subsection (2) and before taking possession of the land, upon giving at least two days notice to the registered owner, apply to a judge for an order extending any time referred to in subsection (2), and a judge may in his order authorize the statutory authority to take possession of the land before the expiration of the extended time for serving the offer or statement under clause (a) of subsection (2) upon such conditions as may be specified in the order.

(5) If any registered owner is not served with the offer required to be served on him under subsection (2) within the time limited by subsection (2) or by an order of a judge under subsection (4) or by agreement, the failure does not invalidate the expropriation but interest upon the unpaid portion of any compensation payable to such registered owner shall be calculated from the date of the deposit in the registry of deeds of the expropriation document. *R.S., c. 156, s. 13.*

### **Offer to settle**

13A In addition to the offer referred to in subsection 13(2), an expropriation authority may make an offer to settle as defined in Section 52, and in making an offer to settle, the expropriating authority may have reference to such additional information as the expropriating authority considers necessary which may include, but which is not limited to, an amended appraisal report. *1995-96, c. 19, s. 2.*

### **Service of offer on unknown registered owner**

14 (1) Where the registered owner is unknown or his address is unknown, the expropriating authority shall, within ninety days after the deposit of the expropriation document under Section 11, serve the registered owner by publication as provided for in subsection (2) of Section 3 and may take possession of the land immediately upon the third publication of the notice in the newspaper.

(2) For the purposes of subsection (1), only the description of the land and the purpose for which it is expropriated and the name of the expropriating authority need be published. *R.S., c. 156, s. 14.*

### **Offer to other owners**

15 (1) Where the owner is a person other than those described in Sections 13 and 14 and no agreement as to compensation has been made, the expropriating authority shall, within one hundred and eighty days after the deposit of the expropriation document under Section 11, make, to each person who is entitled to compensation under this Act in respect of land expropriated to which the expropriation document relates, an offer in writing of compensation in an amount estimated by the expropriating authority to be equal to the compensation to which that person is then entitled in respect of his interest therein.

(2) An offer of compensation made to a person under this Section in respect of land expropriated shall be based on a written appraisal of the value of such interest, and a copy of the appraisal shall be sent to such person at the time of the making of the offer.

(3) Failure to comply with subsection (1) does not invalidate the expropriation but interest upon the unpaid portion of any compensation payable to the owner shall be calculated from the date of the deposit in the registry of deeds of the expropriation document. *R.S., c. 156, s. 15.*

### **Payment**

16 (1) Where an offer of full compensation has been made to a person under this Act and that person accepts the offer, the full amount thereof shall forthwith upon acceptance of the offer be paid to that person.



(2) If the registered owner under Section 13 or the owner under Section 15 does not accept the offer of the amount of full compensation made, then the statutory authority shall immediately pay to him seventy-five per cent thereof without prejudice to the right of that person to claim additional compensation in respect of the expropriation.

(3) If the amount paid pursuant to subsection (2) exceeds the amount of compensation as determined by the Board, the Board shall order the registered owner to pay the excess to the expropriating authority and, upon such order being made, the registered owner shall pay the excess to the expropriating authority. *R.S., c. 156, s. 16; 1995-96, c. 19, s. 3.*

### **If state of title in doubt**

17 (1) Where the expropriating authority, at any time after the registration of the expropriation document at the appropriate office of the registrar of deeds, is in doubt as to the persons who had any right, estate or interest in the land to which the expropriation document relates, or as to the nature or extent thereof, it may apply to the Court to make a determination respecting the state of the title to the land or any part thereof and to order who had a right, estate or interest in the land at that time and the nature and extent thereof.

(2) An application under this Section shall in the first instance be ex parte and the Court shall fix a time and place for the hearing of the persons concerned and give directions as to

(a) the persons who are to be served, the notice of the hearing, the contents of the notice and the manner of service thereof;

(b) the material and information to be submitted by the expropriating authority or any other person; and

(c) such other matters as the Court considers necessary.

(3) After the hearing the Court shall either judge for the purposes of this Act what persons had any right, estate or interest in the land expropriated and the nature and extent thereof or direct an issue or issues to be tried for the purpose of enabling the Court to make such an adjudication.

(4) An adjudication made by the Court for the purposes of this Act shall be deemed to be a final judgment of the Court and, subject to variation on appeal, if any, shall finally determine for all purposes of this Act what persons had any right, estate or interest in the land expropriated and the nature and extent thereof.

(5) An application for appeal under this Section shall be made to the Appeal Division of the Supreme Court, within thirty days after the filing of the decision. *R.S., c. 156, s. 17.*

### **Possession of land after offer served**

18 (1) Where land that has been expropriated is vested in an expropriating authority and the expropriating authority has served the registered owner with an offer in accordance with Section 13, the expropriating authority, subject to any agreement to the contrary and if no application is made under subsection (4) of Section 13, shall take possession of the land on the date specified in the notice.

(2) Subject to subsection (4) of Section 13, the date for possession shall be at least three months after the date of the serving of the offer required by Section 13. *R.S., c. 156, s. 18.*

### **Possession resisted**

19 (1) Where resistance or opposition is made to the expropriating authority or any person authorized by it in entering upon, using or taking possession of land when it is entitled so to do, it may apply ex parte to the Court for an order directing the sheriff to put the expropriating authority into possession of the land expropriated.

(2) On proof of the resistance or opposition, the Court may grant the order ex parte or it may appoint a time and place for the hearing of the application and in the appointment may direct that it shall be served upon such person as it may prescribe and, after a hearing upon proof of the resistance or opposition, may grant the order.

(3) The sheriff shall forthwith execute the order and make a return to the Court of the execution thereof. *R.S., c. 156, s. 19.*

### **Abandonment of expropriated land**

20 (1) Where, at any time before the compensation has been paid in full in satisfaction of proceedings taken under this Act, land expropriated under the provisions of this Act, or any part of such land, is found to be unnecessary for the purpose for which the same was expropriated, or if it is found that a more limited estate or interest therein only is required, the expropriating authority may, by writing under proper execution by its duly authorized officers, registered in the proper registry office, declare that the land or such part thereof is not required and is abandoned by the expropriating authority, or that it is intended to retain only such limited estate or interest as is mentioned in such writing, and thereupon

(a) the land declared to be abandoned shall revert in the person from whom it was taken or in those entitled to claim under him; or

(b) in the event of a limited estate or interest therein being retained by the expropriating authority, the land shall so revert subject to the estate or interest so retained.

(2) Where part only of the land or all of it but a limited estate or interest therein is abandoned, the fact of such abandonment and the damage, if any, sustained in consequence of that which is abandoned having been taken, and all the other circumstances of the case, shall be taken into account in determining the amount to be paid to any person claiming compensation.

(3) Where the whole of the land taken is abandoned, the person from whom it was taken shall be entitled to all damages sustained and all costs incurred by him in consequence of the taking and abandonment, and the amount of the damages shall be determined in the manner provided by this Act, and if a reference as to compensation is pending, shall be determined on such reference. *R.S., c. 156, s. 20.*

### **Duty of registrar of deeds**

21 Notwithstanding the provisions of the Registry Act, every registrar of deeds shall receive and permanently preserve in his office such expropriation documents as the expropriating authority causes to be deposited under this Act, and shall endorse thereon the day, hour and minute when the same were received by him as the time of registration and make such entries in his records as will make their registration a public record. *R.S., c. 156, s. 21.*

### **Filing procedure deemed followed**

22 In all cases, when expropriation documents purporting to be signed by the expropriating authority are deposited in the office of the registrar of deeds, the same shall be deemed to have been so deposited by the direction and authority of the expropriating authority and the formality and procedure relating to the filing of the documents to have been followed. *R.S., c. 156, s. 22.*

### **Certified document as evidence**

23 A document purporting to be certified by a registrar of deeds to be a true copy of an expropriation document registered under this Act at a time stated in the certificate is, without proof of the official character or signature of the registrar, evidence of the facts stated therein and of the registration of the expropriation document at the time so stated. *R.S., c. 156, s. 23.*

## **PART III**

### **COMPENSATION**

#### **Duty to pay compensation**

24 Where land is expropriated, the statutory authority shall pay the owner compensation as is determined in accordance with this Act. *R.S., c. 156, s. 24.*

#### **Rules to determine land value**

25 (1) The rules set forth in this Part shall be applied in determining the value of land expropriated.

(2) The value of land expropriated shall be the value of that land at the time the expropriation documents are deposited at the office of the registrar of deeds. *R.S., c. 156, s. 25.*

#### **Aggregate of items to be compensated**

26 The due compensation payable to the owner for lands expropriated shall be the aggregate of

- (a) the market value of the land or a family home for a family home determined as hereinafter set forth;
- (b) the reasonable costs, expenses and losses arising out of or incidental to the owner's disturbance determined as hereinafter set forth;
- (c) damages for injurious affection as hereinafter set forth; and

(d) the value to the owner of any special economic advantage to him arising out of or incidental to his actual occupation of the land, to the extent that no other provision is made therefor in due compensation. *R.S., c. 156, s. 26.*

## Value

27 (1) In this Section and Section 28, "bonus" means the amount by which the amount secured under a mortgage exceeds the amount actually advanced and does not include accrued interest outstanding and unpaid.

(2) Subject to this Section, the value of land expropriated is the market value thereof, that is to say, the amount that would have been paid for the land if, at the time of its taking, it had been sold in the open market by a willing seller to a willing buyer.

(3) Where the owner of land expropriated was in occupation of the land at the time the expropriation document was deposited in the registry of deeds and, as a result of the expropriation, it has been necessary for him to give up occupation of the land, the value of the land expropriated is the greater of

(a) the market value thereof determined as set forth in subsection (2); and

(b) the aggregate of

(i) the market value thereof determined on the basis that the use to which the land expropriated was being put at the time of its taking was its highest and best use, and

(ii) the costs, expenses and losses arising out of or incidental to the owner's disturbance including moving to other premises but if such cannot practically be estimated or determined, there may be allowed in lieu thereof a percentage, not exceeding fifteen, of the market value determined as set forth in subclause (i),

plus the value to the owner of any element of special economic advantage to him arising out of or incidental to his occupation of the land, to the extent that no other provision is made by this clause for the inclusion thereof in determining the value of the land expropriated.

(4) Where the land expropriated is devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, and the owner intends in good faith to relocate for that purpose, the market value shall be deemed to be the reasonable cost of equivalent reinstatement.

(5) Where only part of the land of an owner is taken and such part is of a size, shape or nature for which there is no general demand or market, the market value and the injurious affection caused by the taking may be determined by determining the market value of the whole of the owner's land and deducting therefrom the market value of the owner's land after the taking.

(6) Notwithstanding subsection (3), where any land expropriated is, at the time the expropriation document was deposited in the registry of deeds, used as a family home by the owner the value of the land expropriated shall be such value as will at current costs and prices put the owner in a position to acquire by purchase or construction a home reasonably equivalent to that which was expropriated.

(7) Persons negotiating or determining a case under subsection (6) shall consider the question whether the reasonably equivalent home can be acquired by purchase, or whether it is certainly or probably

impracticable in the state of the market so to acquire it, in which latter case it may be necessary for them to award sufficient compensation for its construction in lieu of current market value.

(8) For the purposes of subclause (ii) of clause (b) of subsection (3) consideration shall be given to the time and circumstances in which an owner was allowed to continue in occupation of the land after the expropriating authority became entitled to take physical possession or make use thereof, and to any assistance given by the expropriating authority to enable such owner to seek and obtain alternative premises.

(9) The expropriating authority shall pay to a tenant occupying land expropriated in respect of disturbance so much of the cost referred to in subclause (ii) of clause (b) of subsection (3) as is appropriate having regard to

(a) the length of the term of the lease and the portion of the term remaining at the time at which the determination is relevant;

(b) any right or reasonable prospect of renewal of the term that the tenant had; and

(c) any investment in the land by the tenant and the nature of any business carried on by him thereon.

(10) Security holders shall be paid the amount of principal and interest outstanding against the security out of the market value of the land and any damages for injurious affection payable in respect of the land subject to the security in accordance with their priorities, whether or not such principal and interest is due, and subject to subsections (11) and (12).

(11) Where land is subject to a mortgage and the amount payable to the mortgagee under subsection (10) is insufficient to satisfy the mortgage in full,

(a) where the mortgage is a purchase-money mortgage the mortgage shall, to the extent that the mortgage affects title to the land, be deemed to be fully paid, satisfied and discharged for all purposes upon payment of the amount payable to the mortgagee under subsection (10); and

(b) where the mortgage is not a purchase-money mortgage and includes a bonus,

(i) the amount by which the amount payable to the mortgagee under subsection (10) is insufficient to pay the amount remaining unpaid under the mortgage, or

(ii) the amount of the bonus,

whichever is the lesser, shall, to the extent that the mortgage affects title to the land, be deemed to be fully paid and satisfied for all purposes upon payment of the amount payable to the mortgagee under subsection (10).

(12) No amount shall be paid in respect of a bonus until all security holders have been paid all amounts payable other than any bonus.

(13) Where land held as security is expropriated in part or is injuriously affected, a security holder is entitled to be paid to the extent possible in accordance with his priority, out of the market value portion of the compensation and any damages for injurious affection therefor, as the case may be, a sum that is in the same ratio to such portion of the compensation and damages as the balance outstanding on the security at the date of the expropriation or injurious affection is to the market value

of the entire land, provided however that the sum so determined shall be reduced by the amount of any payments made to the security holder by the owner after the date of expropriation or injurious affection. *R.S., c. 156, s. 27; 1995-96, c. 19, s. 4.*

### **If mortgage prepaid by statutory authority**

28 Where a statutory authority prepays a mortgage in whole or in part, the statutory authority

(a) shall pay to the mortgagee an amount in respect of the prepayment amounting to

(i) three months interest on the amount of principal prepaid at the rate of six per cent a year or at such other rate as is prescribed by the Governor in Council by regulation, or

(ii) the value of any notice or bonus for prepayment provided for in the mortgage,

whichever is the lesser;

(b) shall pay to the mortgagee where

(i) the prevailing interest rate for an equivalent investment is lower than the rate under the mortgage, and

(ii) there is no provision in the mortgage permitting prepayment at the date of the expropriation,

an amount to compensate for the difference in the interest rates for the period for which the amount of principal prepaid has been advanced, not to exceed five years; and

(c) shall pay to the mortgagor, whose interest is expropriated, an amount to compensate for any loss incurred by reason of a difference in the interest rates during the period for which the payment of principal provided for in the mortgage has been advanced, but such difference shall not be calculated on a new interest rate any greater than the prevailing interest rate for an equivalent mortgage. *R.S., c. 156, s. 28.*

### **Business loss from relocating and loss of goodwill**

29 (1) Where a business is located on the land expropriated, the statutory authority shall pay compensation for business loss resulting from the relocation of the business made necessary by the expropriation and, unless the owner and the statutory authority otherwise agree, the business losses shall not be determined until the business has moved and been in operation for twelve months or until a three-year period has elapsed from the date of the expropriation, whichever occurs first.

(2) Where it is not feasible for the owner of a business to relocate, there shall be included in the compensation payable an amount for the loss of the business where the compensation for the land taken is based on the existing value of the land.

(3) For the purpose of determining the compensation for loss of goodwill, the value of the goodwill shall be determined in accordance with generally accepted accounting principles. *R.S., c. 156, s. 29; 1995-96, c. 19, s. 5.*

### **Injurious affection and loss of access**

30 (1) A statutory authority shall compensate the owner of land for loss or damage caused by injurious affection.

(2) No compensation is payable for the loss of access to land or egress from land, or both, where the loss is the result of a designation pursuant to the Public Highways Act of a highway or land as a controlled access highway, if other access to the land or egress from the land, as the case may be, is available as a result of a service or land access road being provided. *R.S., c. 156, s. 30; 1995-96, c. 19, s. 6.*

### **Procedure for claim for injurious affection**

31 (1) Subject to subsection (2), a claim for compensation for injurious affection shall be made by the person suffering the damage or loss in writing with particulars of the claim within one year after the damage was sustained or after it became known to him, and, if not so made, the right to compensation is forever barred.

(2) Where the person who is injuriously affected is an infant, an incompetent or a person incapable of managing his affairs, his claim for compensation, if not made on his behalf within the time period stipulated in subsection (1), shall be made within one year after he ceased to be under the disability or, in the case of his death while under the disability, within one year after his death and, if not so made, the right to compensation is forever barred. *R.S., c. 156, s. 31.*

### **Set-off**

32 The value of any advantage to the land or remaining land of an owner derived from any work for which land was expropriated or by which land was injuriously affected shall be set-off only against the amount of the damages for injurious affection to the owner's land or remaining land. *R.S., c. 156, s. 32.*

### **Not to be considered in land valuation**

33 In determining the value of land expropriated, no account shall be taken of

(a) any anticipated or actual use by the expropriating authority of the land at any time after the depositing of the expropriation document in the registry of deeds;

(b) any value established or claimed to be established by or by reference to any transaction or agreement involving the sale, lease or other disposition of the interest or any part thereof, where such transaction or agreement was entered into after the deposit of the expropriation document in the registry of deeds;

(c) any increase or decrease in the value of the land resulting from the anticipation of expropriation by the expropriating authority or from any knowledge or expectation, prior to the expropriation, of the purpose for which the land was expropriated; or

(d) any increase in the value of the land resulting from its having been put to a use that was contrary to law. *R.S., c. 156, s. 33.*

## **Factors in amount of compensation payable**

34 The fact of

- (a) an abandonment or reversion under this Act of an interest or remainder of an interest in land; or
- (b) any undertaking given on behalf of the expropriating authority, or by any other person within the scope of his authority, to make any alteration, construct any work or grant or convey any other land or interest therein,

shall be taken into account, in connection with all other circumstances of the case, in determining the amount to be paid to any person claiming compensation for land expropriated. *R.S., c. 156, s. 34.*

35 repealed 1995-96, c. 19, s. 7.

## **PART IV**

### **NEGOTIATION**

#### **If compensation not agreed upon**

36 (1) Where the statutory authority and the owner have not agreed upon the compensation payable under this Act and, in the case of injurious affection, Section 31 has been complied with or, in the case of expropriation, Section 13 has been complied with, or the time for complying therewith has expired,

(a) the statutory authority or the owner may serve notice of negotiation upon the other of them stating that it or he, as the case may be, requires the compensation to be negotiated; or

(b) where the statutory authority and the owner have agreed to dispense with negotiation proceedings or are unable to agree to a negotiator within thirty days of service of the notice referred to in clause (a), the statutory authority or the owner may serve notice upon the other of them or upon the Board, to have the compensation determined by the Board.

(2) In any case in which a notice of negotiation is served, the negotiator shall, upon reasonable notice to the statutory authority and the owner, meet with them and, without prejudice to any subsequent proceedings, proceed in a summary and informal manner to negotiate a settlement of the compensation.

(3) Before or during the negotiation proceedings, the negotiator shall inspect the land that has been expropriated or injuriously affected.

(4) If the negotiation proceedings do not result in a settlement of the compensation, the statutory authority or the owner may serve notice upon the other of them and upon the Board stating that it or he, as the case may be, requires the compensation to be determined by the Board as though the negotiation proceedings had not taken place. *R.S., c. 156, s. 36.*

## **PART V**

### **NOVA SCOTIA UTILITY AND REVIEW BOARD**



37 to 46 repealed 1992, c. 11, s. 36.

### **Duty of Board**

47 (1) The Board shall determine any compensation where the parties have not agreed on the amount of compensation, and in the absence of agreement, determine any other matter required by this or any other Act to be determined by the Board.

(2) to (4) repealed 1992, c. 11, s. 36.

*R.S., c. 156, s. 47; 1992, c. 11, s. 36; 1995-96, c. 19, s. 8.*

48 and 49 repealed 1992, c. 11, s. 36.

### **Expert evidence**

50 (1) A party is not entitled to adduce the evidence of an expert witness at the hearing unless the party has filed with the Board and served upon the other party or parties at least sixty days before the hearing begins a copy of the expert's report.

(1A) Where a report has been filed with the Board and served on the other party pursuant to subsection (1), the other party may file an expert's report in response at least thirty days before the hearing and is entitled to adduce the evidence in that report.

(2) Subject to subsections (1) and (1A), each party shall be entitled to call two expert witnesses, however the Board may grant leave for additional experts to be called.

(3) The Board may appoint experts to assist it in interpreting evidence of a special or technical nature.  
*R.S., c. 156, s. 50; 1995-96, c. 19, s. 9.*

### **Notice of hearing**

51 The Board shall give notice of its hearings to those parties known to the Board who claim any interest or who, in the opinion of the Board, may have an interest in the land which was expropriated and shall accord to those parties a reasonable opportunity to offer evidence at the hearings. *R.S., c. 156, s. 51.*

### **Costs**

52 (1) In this Section, "offer to settle" means a written offer of an amount in full compensation for land expropriated or for injurious affection caused to an owner, or for both, made by an expropriating authority to the owner at least fourteen days prior to the date of a hearing by the Board that is held to determine the amount of the compensation.

(2) Subject to subsection (5), an owner whose interest in land is expropriated or injuriously affected is entitled to be paid the reasonable costs necessarily incurred by the owner for the purpose of asserting a claim for compensation.

- (3) Subject to subsection (5), where an expropriating authority and an owner agree on the amount of compensation, but do not agree on the amount of costs to be paid, the costs to be paid to the owner shall be determined by the Board.
- (4) Where the compensation awarded to an owner by the Board is greater than the amount offered in the offer to settle, the expropriating authority shall pay to the owner costs as determined by the Board.
- (5) Where the compensation awarded to an owner by the Board is equal to or less than the amount offered in the offer to settle, the owner is entitled to costs, as determined by the Board, to the date of service of the offer to settle but the owner shall bear the owner's own costs that are incurred after that date.
- (6) An offer to settle shall not be disclosed to the Board before its determination of the compensation payable to the owner.
- (7) The costs payable to the owner are
- (a) those costs referred to in subsection (2), (3), (4) or (5); or
  - (b) where the Governor in Council prescribes a schedule of costs, the amounts prescribed in the schedule and not the costs referred to in clause (a).
- (8) In a determination of costs pursuant to subsection (2), (3), (4) or (5), the following shall be taken into account:
- (a) the number and complexity of the issues;
  - (b) the conduct of any party that tended to shorten or unnecessarily lengthen the duration of the proceeding;
  - (c) any step in the proceeding that was improper, vexatious, prolix or unnecessary;
  - (d) the reasonableness and relevance of appraisal and other expert reports, including the cost of the reports;
  - (e) the skill, labour and responsibility involved;
  - (f) the amount of the award or settlement;
  - (g) any other matter relevant to the question of costs.
- (9) The expropriating authority shall pay interest on an unpaid account for costs payable pursuant to this Section at the rate of six per cent per year or such rate as determined by the Governor in Council, from the date the account is served on the expropriating authority by the owner.
- (10) Costs awarded pursuant to this Section are payable upon settlement or final adjudication of compensation to the owner. *1995-96, c. 19, s. 10.*

### **Interest on outstanding compensation**

53 (1) Subject to Sections 13 and 15, the owner of lands expropriated is entitled to be paid interest on the portion of the market value of his interest in the land and on the portion of any allowance for injurious affection to which he is entitled, outstanding from time to time, at the rate of six per cent a year calculated from the date the owner ceases to reside on or make productive use of the lands.

(2) Subject to subsection (3), where the Board is of the opinion that any delay in determining the compensation is attributable in whole or in part to the owner, it may refuse to allow him interest for the whole or any part of the time for which he might otherwise be entitled to interest, or may allow interest at such rate less than six per cent a year as appears reasonable.

(3) The interest to which an owner is entitled under subsection (1) shall not be reduced for the reason only that the owner did not accept the offer made by the expropriating authority, notwithstanding that the compensation as finally determined is less than the offer.

(4) Where the Board is of the opinion that any delay in determining compensation is attributable in whole or in part to the expropriating authority, the Board may order the expropriating authority to pay to the owner interest under subsection (1) at a rate exceeding six per cent a year but not exceeding twelve per cent a year. *R.S., c. 156, s. 53.*

#### **Abatement of rent**

54 (1) Subject to subsection (2), where only part of the interest of a lessee is expropriated, the lessee's obligation to pay rent under the lease shall be abated pro tanto, as determined by the Board.

(2) Where all the interest of a lessee in land is expropriated or where part of the lessee's interest is expropriated and the expropriation renders the remaining part of the lessee's interest unfit for the purposes of the lease, as determined by the Board, the lease shall be deemed to be frustrated from the date of the expropriation. *R.S., c. 156, s. 54.*

55 to 62 repealed 1992, c. 11, s. 36.

#### **Payment of compensation under one thousand dollars**

63 Where the owner who is entitled to convey the land that has been expropriated or injuriously affected and the statutory authority agree as to the compensation or the compensation has been determined and in either case it does not exceed one thousand dollars, the statutory authority may pay the compensation to the owner who is entitled to convey the land, saving always the rights of any other person to the compensation as against the person receiving it, and such payment discharges the statutory authority from all liability in respect of the compensation. *R.S., c. 156, s. 63.*

#### **Appointment of guardian ad litem**

64 (1) The Court may, where a trustee, guardian or other person representing any person under a disability or any other persons including issue unborn is unable or unwilling to act on his or their behalf or where any such person or persons including issue unborn are not so represented or where the person or persons entitled to compensation are unknown or missing, after such notice as the Court may direct, appoint a trustee, guardian or other person ad litem to act on his or their behalf for the purposes of this Act.

(2) The Court in making any appointment under subsection (1) may give such directions as to the disposal, application or investment of any compensation payable under this Act as it deems necessary to secure the interests of all persons having a claim thereto.

(3) Any contract, agreement, release or receipt made or given by any person appointed under subsection (1) and any conveyance or other instrument made or given in pursuance of such contract or agreement is binding for all purposes upon the person by whom, and any person or persons including issue unborn on behalf of whom, such contract, agreement, release or receipt is made or given.

(4) For the purposes of this Section, the Public Trustee is a person eligible for appointment by the Court and may, in his discretion, of his own initiative, make application for such appointment. *R.S., c. 156, s. 64.*

### **Undertaking by statutory authority**

65 Where land is expropriated or is injuriously affected by a statutory authority, the statutory authority may, before the compensation is agreed upon or determined, undertake to make alterations or additions or to construct additional work or make a grant of other lands, in which case, the compensation shall be determined having regard to such undertaking, and, if the undertaking has not already been carried out, the Board may declare that, in addition to the compensation determined, if any, the owner is entitled to have such alteration or addition made or such additional work constructed or such grant made to him. *R.S., c. 156, s. 65.*

## **PART VI**

### **GENERAL**

#### **Regulations**

66 The Governor in Council may make regulations

- (a) prescribing rates of interest for the purposes of Section 28;
- (b) prescribing forms for the purposes of this Act and providing for their use;
- (c) prescribing a schedule of costs payable to an owner under this Act and the rate of interest on unpaid costs;
- (d) defining any word or expression used but not defined in this Act;
- (e) generally for any matter or thing necessary to effect the purposes of this Act. *R.S., c. 156, s. 66; 1992, c. 11, s. 36; 1995-96, c. 19, s. 11.*

#### **Alienation of land acquired under Act**

67 (1) Any land acquired under this Act for any purpose for which a statutory authority is authorized to acquire the same may be granted, sold, leased, transferred or otherwise disposed of by the statutory authority upon such terms and subject to such conditions as will assure, in the opinion of the statutory

authority, the carrying out of the purposes for which the land was acquired and subject to any statutory provision governing the disposition of land by the statutory authority.

(2) Any land referred to in subsection (1) when not required by a statutory authority may be disposed of by that statutory authority as if acquired by purchase. *R.S., c. 156, s. 67.*

## **Regulations Act**

68 Regulations made by the Governor in Council pursuant to subsection (4) of Section 7, subsection (2) of Section 9, subsection (6) of Section 11 and Section 66 and regulations made by the Board under subsection (3) of Section 48 and approved by the Governor in Council shall be regulations within the meaning of the Regulations Act. *R.S., c. 156, s. 67.*

## **PART VII**

### **PURCHASE AND DISPOSAL OF LAND BY HER MAJESTY IN RIGHT OF THE PROVINCE**

## **Application of Part**

69 This Part applies only to Her Majesty in right of the Province. *R.S., c. 156, s. 69.*

## **Interpretation of Part**

70 In this Part,

- (a) "conveyance" includes a surrender to the Crown, and any conveyance to Her Majesty or to a minister or to any officer of his department, in trust, for or to the use of Her Majesty, shall be held to be a surrender;
- (b) "land" includes any estate, term, easement, right or interest to, over, or affecting land;
- (c) "lease" includes agreement for a lease;
- (d) "minister" means the minister presiding over a department of the Government of the Province and charged with or having the supervision, management or control of the construction, maintenance or repair of the public work;
- (e) "owner" includes mortgagee, lessee, tenant, occupant, person entitled to a limited estate or interest, and a guardian, executor, administrator or a trustee in whom land or any interest therein is vested;
- (f) "public work" includes highways, roads and bridges, public buildings, and all other works and property, whether or not of the kind hereinbefore mentioned, belonging to the Province, and also all other works and property acquired, constructed, extended, enlarged, repaired, equipped or improved at the expense of the Province, or for the acquisition, construction, repair, extension, enlargement or improvement of which any public money is appropriated by the Legislature, and every work required for any such purpose, but not any work for which money is appropriated as a subsidy only. *R.S., c. 156, s. 70.*

## **Powers respecting public works**

71 A minister may himself or by his engineers, superintendents, agents, workers or servants, for any purpose relative to the use, construction, maintenance or repair of a public work, or for obtaining better access thereto, and without the consent of the owner

- (a) enter into and upon any land and survey and take levels of the same, and make such borings or sink such trial pits as he deems necessary for any purpose related to a public work;
- (b) enter upon any land and deposit thereon such material as is required for a public work or for the purpose of digging, quarrying, cutting or carrying away any material therefrom for the purpose of the construction, repair or maintenance of a public work;
- (c) make and use all such temporary roads to and from timber, stone, clay, gravel or sand or gravel pits as are required by him for the convenient passing to and from a public work during the construction, repair or maintenance thereof;
- (d) enter upon any land for the purpose of making proper drains to carry off water from a public work, or for keeping such drains in repair;
- (e) divert or alter, temporarily or permanently, the course of any river or other watercourse or any railway, road, street or other way, or raise or sink its level, in order to carry it over or under, on the level of or by the side of a public work, as he deems necessary for any purpose related to that work;
- (f) for the purposes of a public work, divert or alter the position of any water pipe, oil or gas pipe, sewer or drain, or any telegraph, telephone or electric wire, pole or tower. *R.S., c. 156, s. 71.*

## **If wall removed or ditch built**

72 Whenever it is necessary, in the construction, repair or maintenance of a public work, to take down or remove any wall or fence of any owner or occupier of land adjoining a public work, or to construct any drain or ditch for carrying off water, the wall or fence shall be replaced as soon as the necessity that caused its taking down or removal has ceased, and after it has been so replaced, or when the drain or ditch is completed, the owner or occupier of the land shall maintain the wall, fence, drain or ditch to the same extent as he might by law be required to do if the wall or fence had never been so taken down or removed, or the drain or ditch had always existed. *R.S., c. 156, s. 72.*

## **Blasting**

73 (1) Where the Province has contracted with any person for the construction or execution of any public work, or where, by direction of the Governor in Council, or of a minister within the scope of his powers, any officer, employee or agent of the Province is charged with the construction or execution of any public work, the Governor in Council may, if in his opinion it is necessary or expedient that any material be excavated or removed by blasting or the use of explosives, authorize the work to be performed in that manner, notwithstanding that the blasting or explosions may cause damage to land or other property or to the prosecution of any industry or work that is situated in the vicinity of the work or that may be thereby affected.

(2) Notice of the authorization of any work in the manner set forth in subsection (1) shall be sent at least seven days in advance to the owner of any land or other property or to any person carrying on any industry or work that may be affected by such work, and any such owner or person may, within seven days after the sending of such notice to him, apply to the Governor in Council or to any person designated by him for a review of the authorization.

(3) If the construction or execution of a public work is contracted for, then unless the contract otherwise provides, the amount of compensation payable by the Province is chargeable to the contractor, and, if not paid by him forthwith upon demand, may be recovered from him by the Province as money paid to the contractor's use, or may be deducted from any money in the hands of the Province belonging or payable to the contractor. *R.S., c. 156, s. 73.*

### **Compensation by Province for damage**

74 Compensation shall be paid by the Province to each person by whom any actual loss or damage is sustained by reason of the exercise of any power under this Part, equal to the amount of any such loss or damage for which the Province would be liable to that person if the power had not been exercised under the authority of a statute. *R.S., c. 156, s. 74.*

### **Power of minister to acquire land**

75 A minister may, for and in the name of Her Majesty in right of the Province, purchase or acquire any land which he may deem necessary

(a) for any purpose for which a minister is authorized under a specific Act or the former Expropriation Act to purchase and acquire any land;

(b) to implement or carry out or effect an agreement entered into between the Province and the Government of Canada or a city, town or municipality or any combination thereof if the agreement is financed from public funds;

(c) for any public work;

(d) for any purpose that is a public purpose. *R.S., c. 156, s. 75.*

### **Survey or establishment of boundary**

76 (1) A minister may employ a Nova Scotia Land Surveyor or engineer to make any survey or establish any boundary and furnish the plans and descriptions of any property acquired or to be acquired by Her Majesty for any of the purposes authorized by this Act.

(2) The boundaries of such properties may be permanently established by means of proper stone or iron monuments planted by the surveyor or engineer. *R.S., c. 156, s. 76.*

### **Deposit of plan**

77 Where land appropriated for a public work is Crown land, under the control of the Government of the Province, a plan of such land shall be deposited with the Department of Lands and Forests. *R.S., c. 156, s. 77.*

### **Power of guardian or executor to contract**

78 (1) Any tenant for life, guardian, tutor, curator, executor, administrator, committee or person, not only for and on behalf of himself, his heirs and assigns, but also for and on behalf of those whom he represents, whether married women, infants, issue unborn, lunatics, idiots, or other persons, seised, possessed, or interested in any land or other property may contract and agree with a minister for the sale of the whole or any part thereof, and may convey the same to the Crown, and may also contract and agree with the minister as to the amount of compensation to be paid for any such land or property or for damages occasioned thereto, and may also act for and on behalf of those whom he represents in any proceeding for determining the compensation to be paid under this Act.

(2) Where there is no guardian or other person to represent a person under disability, the judge may, after due notice to the persons interested, appoint a guardian or person to represent, for any of the purposes mentioned in subsection (1), the person under disability. *R.S., c. 156, s. 78.*

### **Compensation payable from Consolidated Fund**

79 The Minister of Finance may pay to any person out of any unappropriated moneys forming part of the Consolidated Fund of the Province any sum to which, under this Act, he is entitled as compensation or for costs as a result of the Province purchasing, acquiring or expropriating land. *R.S., c. 156, s. 79.*

### **Property acquired for public purpose**

80 All lands, streams, watercourses and property acquired under this Act or otherwise by the Crown for any public work and purpose shall be vested in the Crown and, when not required for the public work or purpose may be sold, leased or otherwise disposed of under the authority of the Governor in Council. *R.S., c. 156, s. 80.*

### **Alienation of land acquired by Crown**

81 Any land acquired under this Act for any of the purposes set out in Section 10 or 75 may be granted, sold, leased, transferred or otherwise disposed of by the Governor in Council upon such terms and subject to such conditions as will assure, in the opinion of the Governor in Council, the carrying out of the purposes for which the land was acquired. *R.S., c. 156, s. 81.*

## **PART VIII**

### **TRANSITIONAL**

#### **Transitional provisions**

82 (1) Notwithstanding the former Expropriation Procedure Act and the former Expropriation Act, and any other general or private Act, where subsequent to the thirty-first day of December, 1970, a plan and description of land have been filed at the office of the registrar of deeds for the registration district in which the land is located, or the procedure under that Act equivalent to such filing by an expropriating authority has been followed, and no compensation settlement has been made for the land expropriated before the twentieth day of June, 1974, the land shown in the plan and described in



the description is vested in the statutory authority and the said expropriating authority shall be deemed to have complied with Section 11 of this Act as of the twentieth day of June, 1974, and Sections 12 to 68 of this Act apply mutatis mutandis to that expropriation except that if the expropriating authority is in possession immediately before the twentieth day of June, 1974, service of the documents and the making of offers of compensation required by this Act prior to possession shall not affect that possession.

(2) Expropriations prior to the first day of January, 1971, shall be governed by the law in effect at the time of such expropriations.

(3) Expropriations subsequent to the thirty-first day of December, 1970, shall be governed by the law in effect at the time of such expropriations except to the extent and in those cases where subsection (1) applies.

(4) This Act applies to land expropriated on or after the twentieth day of June, 1974.

(5) A reference in any Act other than this Act to the "Expropriation Act" or the Expropriation Procedure Act or the procedure under either or both of those Acts shall mean and shall be construed to mean a reference to this Act.

(6) Nothing herein contained shall mean or be construed to mean that the power of a statutory authority to expropriate land is revoked or changed except that in the case of Her Majesty in right of the Province, the execution of expropriation documents shall be under the signature of the Attorney General rather than the minister named or designated in the appropriate Act. *R.S., c. 156, s. 82.*




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Tab 3

# Public Trustee Act

CHAPTER 379 OF THE REVISED STATUTES, 1989

*as amended by*

1999 (2nd Sess.), c. 8, ss. 9-12; 2001, c. 6, s. 121;  
2002, c. 8, s. 25; 2002, c. 38; 2005, c. 8, s. 19; 2005, c. 42, s. 89;  
2008, c. 4, ss. 20, 21; 2008, c. 8, ss. 41, 42; 2009, c. 28; 2012, c. 32;  
2014, c. 27



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CHAPTER 379 OF THE REVISED STATUTES, 1989  
amended 1999 (2nd Sess.), c. 8, ss. 9-12; 2001, c. 6, s. 121;  
2002, c. 8, s. 25; 2002, c. 38; 2005, c. 8, s. 19; 2005, c. 42, s. 89;  
2008, c. 4, ss. 20, 21; 2008, c. 8, ss. 41, 42; 2009, c. 28; 2012, c. 32;  
2014, c. 27

## An Act to Establish the Office of Public Trustee

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

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### Short title

- 1 This Act may be cited as the *Public Trustee Act*. R.S., c. 379, s. 1.

### Interpretation

- 2 In this Act,

- (a) “administering” means acting as guardian or custodian or trustee or executor or administrator of the estate of a person or a deceased person;
- (b) “court” means a court of competent jurisdiction and includes a judge thereof and in respect of the court of probate includes the registrar of probate;
- (c) “guardian” includes guardian *ad litem*;
- (d) “mentally disordered patient” means an involuntary patient pursuant to the *Involuntary Psychiatric Treatment Act* who is in a psychiatric facility;
- (e) “missing person” means a person who cannot be found after all reasonable efforts have been made to locate him and includes a person who dies intestate or intestate as to some part of his estate without leaving any known heir-at-law living in the Province or any heir-at-law who can be readily communicated with living elsewhere or where the only heir-at-law is an infant or where Her Majesty in right of the Province has an interest in the estate or proceeds thereof;
- (f) “patient” means a person who is under observation, care and treatment in a psychiatric facility;
- (g) “property” means real and personal property;
- (h) “psychiatric facility” means a psychiatric facility pursuant to the *Involuntary Psychiatric Treatment Act*;
- (i) “Public Trustee” means the person appointed as Public Trustee pursuant to this Act. R.S., c. 379, s. 2; 2005, c. 42, s. 89.

### Office of Public Trustee

- 3 (1) There is hereby constituted the office of Public Trustee.

(2) The Public Trustee is a corporation sole under that name with perpetual succession and an official seal of a form to be prescribed and approved by the Governor in Council and such Public Trustee may sue and be sued in his corporate name.

(3) The Governor in Council shall appoint a barrister of not less than ten years standing to be Public Trustee who shall be paid such salary as the Governor in Council determines.

(4) Subject to subsection (5), the Public Trustee appointed shall hold office during good behaviour for such period as the Governor in Council shall determine and shall be eligible for re-appointment.

(5) Unless otherwise determined by the Governor in Council, the Public Trustee shall cease to hold office when he attains the age of sixty-five years.

(6) The Public Trustee has the powers and the duties given to or imposed upon him by this Act, and such further powers and duties as the Governor in Council may prescribe.

(7) The Governor in Council may appoint a person to be the Acting Public Trustee in the case of the illness or absence of the Public Trustee or of a vacancy in the office.

(8) A person appointed as Acting Public Trustee has the powers, rights and duties of the Public Trustee.

(9) The Public Trustee shall have the status of a deputy head and the provisions of the *Civil Service Act* relating to a deputy or to a deputy head shall apply to him.

(10) All full-time persons required to assist the Public Trustee in carrying out the powers, functions and duties imposed by this Act on the Public Trustee shall be appointed in accordance with the provisions of the *Civil Service Act*.

(11) For all purposes of the *Public Service Superannuation Act*, the Public Trustee and every full-time employee engaged to carry out the functions, powers and duties imposed on the Public Trustee pursuant to this Act shall be deemed to be persons employed in the public service of the Province and full-time service in employment in respect of this Act shall be deemed to be public service.

(12) For administration purposes the Public Trustee shall report to the Attorney General in respect to matters set forth in this Act. R.S., c. 379, s. 3.

#### **Delegation by Public Trustee**

**3A** (1) The Public Trustee may delegate to any employee or class of employee in the office of the Public Trustee any of the Public Trustee's powers,

duties or functions and, without limiting the generality of the foregoing, may authorize an employee in the office of the Public Trustee to

- (a) execute or sign a document or instrument requiring the signature of the Public Trustee, or
- (b) do any other thing required in relation to a document or instrument to be done by the Public Trustee.

(2) A delegation made pursuant to subsection (1) must be made in writing.

(3) A delegation pursuant to subsection (1) may be general or applied in a particular case.

(4) When acting pursuant to clause (1)(a), the employee shall sign with the employee's name and add the words "acting under the authority of the Public Trustee pursuant to the *Public Trustee Act*".

(5) For greater certainty, a document or an instrument executed pursuant to clause (1)(a) has the same effect as if the document or instrument was executed by the Public Trustee.

(6) A document or an instrument purporting to be executed pursuant to clause (1)(a) must, in the absence of any evidence to the contrary, be accepted or admitted in evidence without proof of the signature or official character of the person appearing to have signed the document or instrument. 2008, c. 4, s. 20.

#### **Powers of Public Trustee**

4 (1) The Public Trustee may perform the duties of, and be, a

- (a) guardian under
  - (i) the *Guardianship Act*,
  - (ii) the *Incompetent Persons Act*,
  - (iii) the *Inebriates' Guardianship Act*,
  - (iv) the *Probate Act*,
  - (v) the *Civil Procedure Rules*,
  - (vi) an order of a court,
  - (vii) an order of the Governor in Council,
  - (viii) this Act or any other Act;
- (b) custodian of the property of a missing person or a deceased person or as otherwise provided in this Act;
- (c) trustee
  - (i) of the estate of a person or of a deceased person if appointed by order of a court,



(ii) either alone or jointly with any other person or persons to carry out a trust where he is appointed for that purpose

(A) by or in accordance with the instrument creating the trust,

(B) after the creation of the trust with the consent of the majority of the persons beneficially interested in the trust who are for the time being of age and capable in law of giving a valid consent, or

(C) by order of a court;

(d) executor or administrator of the estate of a deceased person in any of the capacities referred to in the *Probate Act* or this Act including the capacity and authority to be appointed executor or administrator of the estate of a deceased person where no person is so appointed so that service of process may be made upon him to effect a legal action.

(2) Where no person has been appointed guardian or custodian of the estate of an infant

(a) who has property vested in him; or

(b) who is entitled either immediately or after an interval either certainly or contingently to property under an intestacy or under a will, settlement, trust, deed or in any other manner whatsoever,

the Public Trustee shall be the guardian or custodian of the estate of that infant.

(3) The Public Trustee may

(a) receive sums of money intended to repay bonds, debentures or other similar evidences of indebtedness when they are not claimed within three years following their maturity;

(b) take charge of property abandoned by a dissolved corporation until such time as he receives a certified copy of an order appointing a trustee of such property;

(c) take charge of the undistributed assets of a company which has been wound up or has gone bankrupt;

(d) accept and receive the proceeds of an insurance policy on the life of a person the beneficiary of which is a resident of the Province and is under the age of eighteen years and give a valid discharge therefor and act as the guardian of the estate of the beneficiary in respect of such proceeds;

(e) take possession of the property and effects and safely keep, preserve and protect the property and effects of a person who dies whether testate or intestate when the property and effects have

not been taken possession of by his executors, administrators or heirs-at-law;

(f) with his consent in writing, be appointed administrator or trustee of and under any will or settlement or instrument creating a charitable trust or a trust in which Her Majesty in right of the Province may have an interest or other instrument creating a trust or duty in the same manner as if he were a private trustee;

(g) act in such other capacity and do such other acts, matters and things as the Public Trustee is authorized or required to do

- (i) by the *Civil Procedure Rules*,
- (ii) by order of a judge,
- (iii) by order of the Governor in Council,
- (iv) under this Act, or
- (v) under any Act.

(4) Where the Governor in Council, a Minister of the Government or a court is empowered to appoint a guardian, custodian, trustee, executor or administrator, the Public Trustee, if he consents to act, may be so appointed.

(5) Where under the *Probate Act* an estate or the proceeds thereof are to be distributed to a person for whose estate a guardian is required and for whose estate no guardian has been appointed, then the estate or proceeds thereof shall be transferred or paid to the Public Trustee, who shall be the guardian of that person's estate, to be administered by him in accordance with this Act. R.S., c. 379, s. 4.

#### **Application to be appointed as guardian**

5 (1) Where a guardian may be appointed pursuant to the

- (a) *Guardianship Act*;
- (b) *Incompetent Persons Act*;
- (c) *Inebriates' Guardianship Act*;
- (d) *Probate Act*; or
- (e) *Civil Procedure Rules*,

the Public Trustee may, on his own initiative, make application to the proper court and be appointed guardian if the court so determines.

(2) If the Public Trustee has been appointed guardian pursuant to an application authorized by subsection (1), then the provisions of the Act pertaining to the appointment shall apply *mutatis mutandis* to such guardianship except to the extent they are varied by this Act. R.S., c. 379, s. 5.

6 *repealed 2002, c. 8, s. 25.*

**Appointment as guardian of patient in N.S. Hospital**

7 (1) Where, in the case of a mentally disordered patient in a psychiatric facility, no guardian of the person and estate of such patient has been appointed under provisions of the *Incompetent Persons Act* or otherwise, the Attorney General may, on the advice of the Minister of Health, appoint the Public Trustee guardian of the person and estate of such patient and upon appointment the provisions of the *Incompetent Persons Act* shall apply *mutatis mutandis* to such guardianship except to the extent they are varied by this Act.

(2) The Attorney General may at any time revoke an appointment made under subsection (1) and discharge the Public Trustee from the performance of any further duties as guardian.

(3) When the Public Trustee has been appointed under this Section the Attorney General may issue a certificate in the form approved by the Attorney General.

(4) A certificate of appointment in the form approved by the Attorney General is conclusive proof of the appointment of the Public Trustee.

(5) The Public Trustee may file the certificate or a true copy of the certificate with the registrar of deeds for the registration district in which any of the real property of the mentally disordered patient is situated.

(5A) Where the real property is registered pursuant to the *Land Registration Act*, the Public Trustee may record the certificate or a true copy of the certificate in the register established pursuant to that Act for each parcel that shows the mentally disordered patient as a registered owner.

(6) Upon receipt of a certificate, the registrar of deeds for the registration district shall register it, and until he receives notice from the Public Trustee of the withdrawal of the certificate he shall not accept for registration any instrument affecting the mentally disordered patient's lands except an order of the court, a certificate of judgment or any document properly registerable [registrable] in the course of proceedings for foreclosure or sale, unless the instrument or the document is executed by the Public Trustee, or the registration is authorized by him.

(6A) Where the real property is registered pursuant to the *Land Registration Act*, upon receipt of a certificate, the registrar for the registration district shall record it in the register established pursuant to that Act for each parcel affected, and until the registrar receives notice from the Public Trustee of the withdrawal of the certificate the registrar shall not accept for registration or recording any instrument affecting the mentally disordered patients lands, except an order of the court, a certificate of judgment or any document properly registrable or recordable in the course of proceedings for foreclosure or sale, unless the instrument or the document is executed by the Public Trustee or the registration or recording is authorized by the Public Trustee.

(7) A recital in a lease, mortgage, conveyance or other document that a mentally disordered patient is a patient in a psychiatric facility and that the

Public Trustee is his guardian is evidence of the facts recited therein. R.S., c. 379, s. 7; 1992, c. 14, s. 53; 2001, c. 6, s. 121; 2005, c. 42, s. 89.

#### **Guardian of estate of physically disabled person**

**8 (1)** The court by order may

(a) where an application is made by a relative, friend or creditor of a person who is by reason of physical disability incapable of attending to and transacting his business affairs; and

(b) where satisfied that the person is suffering from such incapacity and is unable to attend to or transact his own affairs or business and by reason thereof his estate is in jeopardy,

appoint the Public Trustee guardian of the estate of that person.

(2) The Public Trustee when appointed a guardian pursuant to subsection (1) has with respect to the estate the powers that he has under this Act with respect to the estate of a mentally disordered patient.

(3) The Public Trustee may enter into an agreement with anyone respecting the guardianship of that person's estate if such person is by reason of physical disability incapable of attending to and transacting his business affairs.

(4) The Public Trustee may enter into an agreement with a patient who is not an incompetent person and is in a psychiatric facility respecting the guardianship of that person's estate while he is a patient in the psychiatric facility and such agreement may be terminated by the patient at any time in writing signed and sealed by him.

(5) The Public Trustee when appointed a guardian pursuant to subsection (3) has with respect to the estate the powers set forth in the agreement which agreement shall not terminate automatically by the mental incompetency or death of the person for whose estate the Public Trustee is the guardian. R.S., c. 379, s. 8.

#### **Section 14 of Personal Directives Act**

**8A (1)** Where a decision has been made pursuant to Section 14 of the *Personal Directives Act* to accept an offer of placement in a continuing-care home or regarding provision of home-care services or the delegate named in a personal directive has decided to accept an offer of placement in a continuing-care home or regarding provision of home-care services and the person being placed in the continuing-care home or to be provided home-care services does not have

(a) a person appointed as guardian; or

(b) an enduring power of attorney or other legal arrangement to manage the estate or financial affairs of the person being placed or to be provided home-care services,

a referral may be made to the Public Trustee stating that the person being placed or to be provided home-care services is not capable of managing the person's financial affairs.

(2) A referral referred to in subsection (1) must be accompanied by the written opinion of a duly qualified medical practitioner or a prescribed health-care professional stating that the person being placed in a continuing-care home or to be provided home-care services is not capable of managing the person's financial affairs.

(3) A referral made pursuant to subsection (1) may be made by the person in charge of a continuing-care home or home-care services provider, by a delegate named in a personal directive, or by the person making the decision to accept placement in a continuing-care home or regarding provision of home-care services under Section 14 of the *Personal Directives Act*.

(4) Where a referral has been made pursuant to subsection (1), the Public Trustee has the authority to have access to any relevant information respecting the financial affairs of the person being placed in a continuing-care home or to be provided home-care services and may take any action the Public Trustee considers appropriate to protect the property and financial affairs of the person.

(5) In subsection (6), "person" means a person placed in a continuing-care home or to be provided home-care services pursuant to Section 14 of the *Personal Directives Act* or pursuant to a decision of a delegate named in a personal directive to accept a placement in a continuing-care home or the provision of home-care services.

(6) Where the Public Trustee

(a) is unable to find a legally appointed guardian of the estate of a person;

(b) is unable to find an attorney appointed by a person under an enduring power of attorney; or

(c) is of the opinion that the Public Trustee's continued intervention is appropriate with respect to a person,

the Public Trustee is deemed to be guardian of the property and financial affairs of the person. 2008, c. 8, s. 41; 2009, c. 28, s. 1; 2014, c. 27, s. 1.

#### **Guardian for estate of non-resident**

9 (1) The Attorney General may, by order, appoint a public trustee, official guardian or other public official responsible for managing, handling, administering or caring for the estate of a person residing in another province to be the guardian of that person's estate in the Province.

(2) A person appointed pursuant to subsection (1) has the same rights, powers, privileges, immunities, duties, obligations and functions in respect

of the estate as the Public Trustee would have if the Public Trustee were responsible for managing, handling, administering or caring for the estate.

(3) The *Incompetent Persons Act* applies *mutatis mutandis* to an appointment made pursuant to subsection (1), except to the extent that that Act is varied by this Act. 2005, c. 8, s. 19.

#### **Maintenance and education of infant**

10 (1) Where an infant is entitled to share in the estate of an intestate and the share has been paid to the Public Trustee as guardian of the estate of the infant or for the benefit of the infant, or where property is held by the Public Trustee as trustee for an infant and such property is not subject to the terms of a will, trust deed or other instrument governing the trust, the Public Trustee may

(a) if the share or property of the infant does not exceed in value the sum of one hundred thousand dollars,

(i) from time to time expend, or advance to a person who has the lawful custody of the infant, such sum or sums as the Public Trustee deems necessary for or towards the maintenance and education of the infant, and

(ii) for the purpose of subclause (i), resort to capital and sell or convert any of the property held on behalf of the infant;

or

(b) if the share or property of the infant exceeds in value the sum of one hundred thousand dollars,

(i) apply the income from the share or property for the maintenance or education of the infant, and

(ii) from time to time apply to a judge of the Supreme Court on summary application for an order authorizing him to expend or to advance to a person having the lawful custody of the infant so much of the share or property for the maintenance and education of the infant as the judge deems proper.

(2) Upon the making of an order under subclause (ii) of clause (b) of subsection (1) the court, for the purpose of making the payments or advances authorized by the order, may authorize the sale or conversion of any of the property held by the Public Trustee on behalf of the infant.

(3) Where as a result of an order granted pursuant to subclause (ii) of clause (b) of subsection (1) the balance of the share or property of an infant remaining in the hands of the Public Trustee does not exceed in value the sum of one hundred thousand dollars, then the Public Trustee may deal with this share or property as set forth in clause (a) of subsection (1). R.S., c. 379, s. 10; R.S., c. 240, s. 10; 1999 (2nd Sess.), c. 8, s. 9.

**Application respecting missing person**

**11** (1) The Public Trustee shall be served with notice of each application made to a court in respect of the property or estate of a missing person.

(2) Such service on the Public Trustee may be made by delivering to the Public Trustee a copy of the originating notice, petition or other process originating the matter in which the application is made, together with copies of all affidavits and other material to be used on the application.

(3) The Public Trustee when served is guardian of the estate or the property of the missing person until the court otherwise orders.

(4) No application referred to in subsection (1) shall be proceeded with until the Public Trustee is represented on the application or has expressed his intention of not being represented. R.S., c. 379, s. 11.

**Powers of Public Trustee respecting missing person**

**12** Where it appears to the Public Trustee that a person is a missing person within the meaning of this Act, the Public Trustee after investigation may

(a) take possession of the property and effects of the missing person; and

(b) safely keep, preserve and protect the property and effects pending an order of a judge of the Supreme Court. R.S., c. 379, s. 12.

**Powers of Court respecting missing person**

**13** (1) If it is proved to the satisfaction of a judge of the Supreme Court that a person is a missing person within the meaning of this Act, the judge

(a) may ~~delare~~ [declare] that person to be a missing person; and

(b) by order may appoint the Public Trustee as trustee of the property of the missing person.

(2) The Public Trustee on the order of a judge of the Supreme Court may mortgage, lease, sell or otherwise dispose of any of the property of the missing person.

(3) The registrar of deeds for the registration district within which the land of the missing person is situated

(a) on production of an instrument effecting a disposition of land referred to in subsection (2); and

(b) on production of a copy of or a certified copy of the order referred to in subsection (2),

shall deal with the instrument in the same manner as if the instrument were executed by the missing person.

(4) Where the real property is registered pursuant to the *Land Registration Act*, the registrar for the registration district within which the land of the missing person is situated

(a) on production of an instrument effecting a disposition of land referred to in subsection (2); and

(b) on production of a copy of or a certified copy of the order referred to in subsection (2),

shall deal with the instrument in the same manner as if the instrument were executed by the missing person. R.S., c. 379, s. 13; 2001, c. 6, s. 121.

**Payments from estate of missing person**

14 (1) The Public Trustee without a further order of a judge of the Supreme Court may pay out of the capital or income of the property of a person declared to be a missing person

(a) sums of money that the missing person might otherwise have been liable to pay; and

(b) such payments and allowances as are necessary for the maintenance or education

(i) of a spouse or child or reputed child of the missing person, or

(ii) of any other relative or reputed relative of the missing person dependent upon him for support.

(2) The Public Trustee shall not make a distribution of the estate of a missing person, otherwise than as provided in subsection (1), until the expiration of two years from the time when the person was declared to be a missing person, and then only when directed to do so by an order of a judge of the Supreme Court. R.S., c. 379, s. 14.

**Continued authority to administer estate**

14A (1) Notwithstanding any other Act, where

(a) the Public Trustee is managing the estate of a patient pursuant to Section 59 of the *Hospitals Act* and the patient is discharged from the hospital;

(b) the Public Trustee is managing the estate of an adult pursuant to Section 13 of the *Adult Protection Act* and either the court finds that the person is not a person in need of protection or the order that a person is an adult in need of protection expires, terminates or is rescinded; or

(c) the Public Trustee is managing the estate of a person pursuant to Section 8A,



the Public Trustee is deemed to be the guardian of the property and financial affairs of the person and the Public Trustee's guardianship and authority to manage the estate continues until

- (d) the Public Trustee determines that it is no longer necessary to manage the estate of the person;
- (e) the Supreme Court, or a judge thereof, appoints another person to be guardian of the estate of the person;
- (f) the Public Trustee receives a revocation of the declaration of competency stating that the person is not capable of administering the person's estate issued pursuant to the *Hospitals Act*;
- (g) the Public Trustee receives a written medical opinion signed by a physician stating that the physician has performed an assessment of the person's competency and that the physician is of the opinion that the person is competent to manage the person's estate; or
- (h) a court determines that the person is competent to manage the person's estate and finances,

and the Public Trustee shall manage the estate in accordance with this Act.

(2) For greater certainty, where the Public Trustee is deemed guardian of the property and financial affairs of a person pursuant to subsection (1), the Public Trustee has the authority to mortgage, sell, convey or otherwise dispose of or deal with any property of the person upon such terms as the Public Trustee considers appropriate and to apply the proceeds so far as are necessary to the maintenance, support and best interest of the person. 2008, c. 8, s. 42; 2014, c. 27, s. 2.

#### **Authority to sell without licence**

**14B** Notwithstanding any other Act, where the Public Trustee has been appointed by the Supreme Court of Nova Scotia as guardian of an incompetent person pursuant to the *Incompetent Persons Act*, the Public Trustee has the authority, without obtaining a licence for sale from that court, to mortgage, sell, convey or otherwise dispose of or deal with any property of the incompetent person upon such terms as the Public Trustee considers appropriate and to apply the proceeds so far as are necessary to the maintenance, support and best interest of the incompetent person. 2014, c. 27, s. 3.

#### **Court filed memorandum**

**14C** Where the Public Trustee mortgages, sells, conveys or otherwise disposes of or deals with any property pursuant to Section 14A or 14B, a memorandum reporting and setting out the details of the mortgage, sale, conveyance or disposal must be filed with the Supreme Court of Nova Scotia within thirty days of the transaction. 2014, c. 27, s. 3.

**Death while estate administered**

**15** (1) When the Public Trustee is administering an estate of a person as guardian, trustee or custodian pursuant to this Act or any other Act and the person for whose benefit the estate is being administered dies, the Public Trustee shall retain possession of the estate of the deceased pending

- (a) a grant of probate or letters of administration;
- (b) a grant of letters of administration with will annexed;
- or
- (c) the appointment of the Public Trustee by the Governor in Council.

(2) Under subsection (1) the Public Trustee continues to have and shall exercise with respect to the estate of the deceased person the powers had and exercised by the Public Trustee while the deceased was alive.

(3) The Public Trustee

(a) may apply to the court having jurisdiction for letters of administration or letters of administration with will annexed with respect to the estate of the deceased person; and

(b) on complying with the practice and procedure of the court in so far as applicable, is entitled to the letters of administration or letters of administration with will annexed in priority to the next of kin of the deceased or any other person interested in the estate of the deceased.

(4) The Governor in Council may, where it is deemed expedient to do so, appoint the Public Trustee to be administrator of the estate of the deceased person, and the Public Trustee when appointed has with respect to the estate the powers and duties of an administrator appointed by the court.

(5) The Public Trustee on receipt of an order in council containing the appointment referred to in subsection (4) shall file forthwith a certified copy of the order in council with the registrar of probate

(a) for the district in which the person had his place of residence; and

(b) in each district where any property of the person is situated.

(6) The registrar of probate shall file the copy of the order in council among his records without fee.

(7) When a copy of the order in council is filed with the registrar of probate for a district, no grant of probate or letters of administration or letters of administration with will annexed shall be issued thereafter by that court in respect of the property of the deceased person unless the appointment of the Public Trustee by the Governor in Council has been rescinded. R.S., c. 379, s. 15.

**Election to administer estates under \$25,000 in priority to next of kin**

**15A (1)** Notwithstanding subsection 15(3), where the gross value of the estate of the deceased as estimated by the Public Trustee does not exceed twenty-five thousand dollars, the Public Trustee, without obtaining any order or authority from the court or from the Governor in Council or otherwise, may, instead of obtaining letters of administration or letters of administration with will annexed, make an election in writing to administer the estate of the deceased person in priority to the next of kin of the deceased or any other person interested in the estate of the deceased and may

(a) out of the personal property give or distribute, in the Public Trustee's discretion, wearing apparel and articles of personal use or ornament to or among one or more of the family and relatives of the deceased, and, where there are no family or relatives of the deceased, to such person or persons as the Public Trustee deems fit;

(b) sell property not dealt with under clause (a) and apply proceeds towards payment of sums due and debts incurred; and

(c) do all things necessary to complete the administration of the estate.

**(2)** A written election made under subsection (1) must

(a) set out the name, the residence and the extent of the estate of the deceased person, and contain an election to administer the estate; and

(b) be filed in the office of the registrar of probate for the district within which the deceased person resided or within which the property within the Province is situated.

**(3)** When the election is filed, the Public Trustee is constituted administrator of the estate of the deceased person and the filing of the election is conclusive proof of the right of the Public Trustee to do all things necessary to complete the administration of the estate.

**(4)** No fee is payable to a court in respect of the filing of an election or the right to administer obtained by filing an election.

**(5)** A copy of an election certified as a correct copy by the registrar of probate is equivalent to an exemplification of letters of administration for all purposes, and no fee under any rule of court or under the *Probate Act* is payable in respect thereof except a fee of one dollar.

**(6)** When the administration of the estate has been completed, the Public Trustee shall file in the office of the registrar of probate an account of the administration verified by oath. 2014, c. 27, s. 4.

**Election to administer estate of deceased**

**16 (1)** The Public Trustee without obtaining any order or authority from a court or from the Governor in Council or otherwise may, where

(a) either

(i) a person dies intestate in or out of the Province leaving an estate or interest therein in the Province, or

(ii) he is administering the estate of a person as guardian, trustee or custodian pursuant to this Act or any other Act and the person for whose benefit the estate is being administered dies;

(b) the gross value of the estate or interest therein as estimated by him does not exceed twenty-five thousand dollars;

(c) no person has taken out a grant of probate or letters of administration or letters of administration with will annexed; and

(d) all parties entitled to apply for a grant of administration or probate, renounce their right to do so and nominate the Public Trustee,

instead of obtaining letters of administration or letters of administration with will annexed make an election in writing to administer the estate or interest therein, and may

(e) out of the personal property give or distribute, in his discretion, wearing apparel and articles of personal use or ornament to or among one or more of the family and relatives of the deceased, and, if there are no family or relatives of the deceased, to such person or persons as he deems fit;

(f) sell property not dealt with under clause (e) and apply the proceeds towards payment of sums due and debts incurred; and

(g) do all things necessary to complete the administration of the estate.

(2) The election shall

(a) set out the name of the deceased person and, so far as then known to the Public Trustee, the residence, occupation and the extent of the estate of the deceased person, and contain an election to administer the estate; and

(b) be filed in the office of the registrar of probate for the district within which the deceased person had his last known place of abode, or within which the property within the Province is situated.

(3) When an election is so filed, the Public Trustee is constituted administrator of the estate of the deceased person and the filing of the election is conclusive proof of the right of the Public Trustee to do all things necessary to complete the administration of the estate.

(4) No fee is payable to a court in respect of the right to file an election as well as in respect of the right to administer obtained by filing an election.

(5) A copy of an election certified as a correct copy by the registrar of probate is equivalent to an exemplification of letters of administration for all purposes, and no fee under any rule of court or under the *Probate Act* is payable in respect thereof except a fee of one dollar.

(6) When the administration of the estate has been completed, the Public Trustee shall file in the office of the registrar of probate an account of the administration verified on oath. R.S., c. 379, s. 16; 1999 (2nd Sess.), c. 8, s. 10; 2012, c. 32, s. 1.

#### **Advertisement for claims against estate**

17 (1) The Public Trustee, previous to the payment of debts or the distribution of the estate of the deceased, shall by advertisement in the Royal Gazette newspaper for one month call on all persons who have demands upon the estate of the deceased to exhibit such demands within six months from the date of the advertisement.

(2) The advertisement referred to in subsection (1) shall be in such form or forms as the Attorney General prescribes.

(3) Such demands, when exhibited, shall be attested to by the claimant or, when the claimant is an incorporated company, by an officer thereof or, in the absence from the Province of a claimant or the officer thereof, by his or its agent, and the affidavit shall state whether the creditor is or is not a secured creditor and shall be in the Form in the Schedule to this Act or to the like effect with such variations as may be required. R.S., c. 379, s. 17.

#### **Payment of claims and distribution of estate**

18 (1) The Public Trustee, not later than twelve months from the date of election, shall pay all such legal and just claims as have been exhibited, so far as the estate of the deceased in his hands will enable him, and shall make distribution of the estate as is directed by the will of the deceased, or by this or any other Act.

(2) Sums due and debts incurred for the burial of the deceased and the cost of a gravestone or monument not disproportionate to the value of his estate and the expenses of the Public Trustee may be defrayed by the Public Trustee out of the assets of the estate and shall have priority over all claims of creditors of the deceased. R.S., c. 379, s. 18.

#### **Distribution of insolvent estate**

19 In the settlement and distribution of the insolvent estate of any deceased person the whole of the property remaining, after payment of the charges and expenses of the necessary medical and other attendance on the deceased during his last illness, and of his funeral and gravestone, and the expenses attendant on the settlement of the estate shall be distributed among those creditors who have rendered their accounts, duly attested, in the following manner:

(a) the wages of clerks, domestic and farm servants, and rent, shall be paid in full for not more than one year next preceding the death and any excess shall be on the same footing as other claims;

(b) all other creditors shall be paid in proportion to the amount of their respective claims. R.S., c. 379, s. 19.

**Judgment creditor or mortgagee**

**20** (1) Nothing in Section 19 shall affect any debt secured by mortgage of property or by a judgment which was registered in the lifetime of the deceased, so as to bind his property.

(2) The right of any creditor who has not exhibited an attested account to recover his claim against the estate of the deceased within six months from the date of the advertisement referred to in Section 17 shall be null and void. R.S., c. 379, s. 20.

**Filing of memorandum by Public Trustee**

**21** (1) If, after filing the election, the gross value of the property to be administered is found to exceed twenty-five thousand dollars, the Public Trustee as soon as practicable after filing the election shall file in the office of the registrar of probate a memorandum stating that fact, and may proceed in the ordinary manner to obtain letters of administration.

(2) If, after filing the election, the Public Trustee discovers that the election is invalid or ineffective by reason of the discovery of a will or for any other reason, the Public Trustee may file in the office of the registrar of probate a memorandum

- (a) setting out the facts; and
- (b) certifying that the election already filed is ineffective.

(3) Where such a memorandum is filed, the election to administer ceases to be of effect unless the registrar of probate orders the Public Trustee to complete the administration of the estate. R.S., c. 379, s. 21; 1999 (2nd Sess.), c. 8, s. 11; 2012, c. 32, s. 2.

**Application to administer intestate estate**

**22** (1) When a person has died intestate, in or out of the Province, leaving property in the Province and no application for letters of administration has been made, the Public Trustee may apply for letters of administration of the estate.

(2) If the Public Trustee knows of any person resident in the Province

(a) who would be entitled to letters of administration prior to the exercise of the powers conferred on the Public Trustee by this Section; and

(b) who has not renounced his right to apply for letters of administration,

the Public Trustee shall give notice to that person by registered mail of his intention to apply for letters of administration.

(3) Where notice referred to in subsection (2) is required, the Public Trustee shall not apply for letters of administration until the expiration of one month from the mailing of such notice.

(4) If within the time referred to in subsection (3) an application for letters of administration has been made by another person entitled to letters of administration in priority to the Public Trustee, then the Public Trustee shall not apply for letters of administration unless the application of that person has been refused.

(5) Where a grant has been made to the Public Trustee under this Section,

(a) the grant may be revoked upon such terms as to the payment of costs and charges of the Public Trustee as the court deems fair and proper; and

(b) a new grant may be made upon application of a person otherwise entitled to letters of administration upon proof that

(i) he has not renounced or refused administration,

(ii) the omission to apply sooner for administration was due to absence from the Province, illness, incapacity or other circumstances sufficient to excuse the omission, and

(iii) one month's notice in writing of his intention to apply for a grant has been given to the Public Trustee.

(6) On an application under subsection (5), no costs shall be awarded against the Public Trustee. R.S., c. 379, s. 22; 1999 (2nd Sess.), c. 8, s. 12; 2012, c. 32, s. 3; 2014, c. 27, s. 5.

#### **Election to administer estate under \$25,000**

**22A (1)** Notwithstanding subsection 22(1), where the gross value of the estate of the deceased as estimated by the Public Trustee does not exceed twenty-five thousand dollars, the Public Trustee, without obtaining any order or authority from the court or otherwise, may, instead of obtaining letters of administration, make an election in writing to administer the estate of the deceased person.

(2) Where the Public Trustee intends to make an election to administer the estate and knows of any person resident in the Province who

(a) would be entitled to letters of administration prior to the exercise of the powers conferred on the Public Trustee by this Section; and

(b) has not renounced the right to apply for letters of administration,

the Public Trustee shall give notice to that person by registered mail of the Public Trustee's intention to make an election in writing to administer the estate.

(3) Where notice referred to in subsection (2) is required, the Public Trustee shall not make the election until the expiration of one month from the mailing of such notice.

(4) Where within the time referred to in subsection (3) an application for letters of administration has been made by another person, the Public Trustee may not make an election to administer the estate unless the person's application is refused.

(5) Upon making an election in writing to administer the estate of the deceased person, the Public Trustee may

(a) out of the personal property give or distribute, in the Public Trustee's discretion, wearing apparel and articles of personal use or ornament to or among one or more of the family and relatives of the deceased, and, where there are no family or relatives of the deceased, to such person or persons as the Public Trustee deems fit;

(b) sell property not dealt with under clause (a) and apply proceeds towards payment of sums due and debts incurred; and

(c) do all things necessary to complete the administration of the estate.

(6) A written election made under subsection (1) must

(a) set out the name, the residence and the extent of the estate of the deceased person, and contain an election to administer the estate; and

(b) be filed in the office of the registrar of probate for the district within which the deceased person resided or within which the property within the Province is situated.

(7) When the election is filed, the Public Trustee is constituted administrator of the estate of the deceased person and the filing of the election is conclusive proof of the right of the Public Trustee to do all things necessary to complete the administration of the estate.

(8) No fee is payable to a court in respect of the filing of an election or the right to administer obtained by filing an election.

(9) A copy of an election certified as a correct copy by the registrar of probate is equivalent to an exemplification of letters of administration for all purposes, and no fee under any rule of court or under the *Probate Act* is payable in respect thereof except a fee of one dollar.

(10) When the administration of the estate has been completed, the Public Trustee shall file in the office of the Registrar of Probate an account of the administration verified on oath. 2014, c. 27, s. 6.



**Where executors renounce or no next of kin**

23 (1) Notwithstanding any other Act,

(a) where

(i) the adult next of kin residing in the Province of a person who dies wholly or partially intestate, in or out of the Province, leaving property in the Province, or

(ii) the executors named in the will and the adult residuary beneficiaries residing in the Province of a person who dies testate, in or out of the Province, leaving property in the Province,

have renounced any right to apply for letters of administration or probate or letters of administration with will annexed; or

(b) where there is no adult next of kin or adult residuary beneficiary residing in the Province of a person who dies wholly or partially intestate, in or out of the Province, and the executors have renounced their right to apply for probate,

the Public Trustee is entitled to apply for and to receive a grant of letters of administration or letters of administration with will annexed of the estate of that person in priority to all other persons.

(2) In this Section, "next of kin" means

(a) the spouse and children of the deceased person; or

(b) where there is no spouse or child, the persons who are entitled under the *Intestate Succession Act* to the estate of the deceased person. R.S., c. 379, s. 23.

**Cases of priority in administration**

24 Where the Public Trustee is administering the estate of a person or a deceased person who is

(a) a beneficiary under the will of a deceased person and there is no executor or the executor has renounced probate, or the last surviving executor has died;

(b) entitled to the estate or a portion of the estate of a deceased intestate and there is no administrator of the estate; or

(c) the executor of a will or the administrator of the estate of a deceased person,

the Public Trustee may apply to the court having jurisdiction for letters of administration or letters of administration with will annexed or letters of administration *de bonis non* with respect to that estate, and on complying with the practice and procedure of the court in so far as applicable the Public Trustee is entitled to the letters in priority to the next of kin of the deceased or any other person interested in his estate. R.S., c. 379, s. 24.

**Letter as proof**

**25** A letter signed by the Public Trustee addressed to any person in possession of property belonging to a person or a deceased person, advising that the Public Trustee is administering the estate of the person or deceased person pursuant to this Act, is proof that the Public Trustee is the administrator of the estate of the person or deceased person. R.S., c. 379, s. 25.

**Human Tissue Gift Act**

**26** Notwithstanding that the Public Trustee has the powers of an executor or administrator in respect of the estate of a deceased person, or that he is authorized to sell property of a deceased person and apply the proceeds thereof toward payment of the burial expenses of the deceased person, the Public Trustee shall be deemed not to be a legal representative, or person having lawful possession of a body, within the meaning of and for the purposes of the *Human Tissue Gift Act*. R.S., c. 379, s. 26.

**Transfer of property of non-resident to Public Trustee**

**27 (1)** Any property to which a person who is resident outside of the Province is entitled under an intestacy or a will may be, with the consent of the Public Trustee, transferred by the administrator or executor to the Public Trustee who in such case shall act as trustee of the property for such person.

**(2)** The receipt in writing of the Public Trustee for such property shall be a discharge to the administrator or executor of seeing to the application of such property.

**(3)** The Public Trustee may

**(a)** pay out of the capital or income of the property such money as is required to ensure its effectual transfer and proper maintenance and administration; and

**(b)** deal with the property in the manner and to the extent as may a trustee under the *Trustee Act*. R.S., c. 379, s. 27.

**Transfer of undistributed assets to Public Trustee**

**28 (1)** An executor or administrator or a trustee acting pursuant to the provisions of a will or otherwise may at any time and shall, after the expiration of five years next after receipt of the assets of an estate or trust, apply for an order authorizing the transfer of the assets to the Public Trustee when the heir-at-law or beneficiary cannot be located or identified or the object of the trust cannot be carried out or if for any other reason it is not possible to distribute the assets of the estate or trust.

**(2)** Any such assets received by the Public Trustee pursuant to the direction of the court shall be converted into cash by the Public Trustee and paid immediately to the Minister of Finance and the provisions of Sections 35 or 35A shall apply *mutatis mutandis* thereto.

(3) Where assets are transferred to the Public Trustee pursuant to this Section, the transfer shall have the same effect as a transfer to the heir-at-law or beneficiary for the purpose of any enactment or law governing the administrator, executor or trustee. R.S., c. 379, s. 28; 2002, c. 38, s. 1.

**Successor to official under former Acts**

29 (1) The Public Trustee is the successor in office of the Attorney General under the former *Administration of Estates by the Attorney General Act* and the Administrator of Estates under the former *Official Administrator of Estates Act* and unless the authorization and appointment of a person authorized and appointed to make application to the court of probate for administration of an estate by the Attorney General or the Administrator of Estates pursuant to the provisions of those Acts is revoked by the Public Trustee such person shall continue in his authorization and appointment in accordance with the provisions of those Acts.

(2) The Public Trustee with the consent of the Attorney General may

(a) make application to the court of probate for the grant of a citation against a person so appointed by the Attorney General or by the Administrator of Estates under those Acts requiring him to proceed to the settlement of the accounts of the estate and the court of probate shall grant such citation and issue the same and make a decree thereon directing the administrator to proceed to the settlement of the estate in accordance with the provisions of the *Probate Act*; or

(b) revoke the authorization and appointment made by the Attorney General pursuant to the provisions of the former *Administration of Estates by the Attorney General Act*, or made by the Administrator of Estates under the provisions of the former *Official Administrator of Estates Act*,

or do both.

(3) Upon receipt of a notice in writing under the signature and seal of the Public Trustee, such notice stating that it is made with the consent of the Attorney General, the court of probate shall immediately revoke the grant of letters of administration made to the person previously authorized by the Attorney General or the Administrator of Estates and give notice to the administrator of such revocation by registered mail and within thirty days of the mailing of the notice by the court of probate the administrator shall file with the Public Trustee and the court of probate his accounts in the estate.

(4) Within fifteen days after receipt by the court of probate of such accounts or at such time as may be set by it, the court of probate shall adjudicate upon the same in accordance with the procedure set out in the *Probate Act* for the settlement of estates, and where the court of probate is of the opinion that further administration is required in connection therewith, it shall grant letters of administration to the Public Trustee who shall administer those assets coming into his hands

as if the original grant of letters of administration had been made to him and may continue and carry out any and all contracts entered into and on behalf of the estate and all proceedings taken in relation to the estate.

(5) Any property of an intestate for which an administrator appointed by the Attorney General or by the Administrator of Estates does not or cannot account may be recovered with costs in any court of competent jurisdiction as if the same were the property of Her Majesty in right of the Province and where such property cannot be found or is lost or stolen, then its value as shown in inventory on file at the court of probate may be recovered with costs in any court of competent jurisdiction as a debt due Her Majesty in right of the Province.

(6) Any action for the recovery of such property or the monetary value thereof shall be brought by the Attorney General on behalf of Her Majesty in right of the Province and shall be tried without a jury, and the administrator against whom the action is brought shall have the burden of proving that the property had not come into his hands as such administrator.

(7) The Public Trustee may exercise, continue or carry out under this Act all the appointments, obligations, powers and duties previously conferred upon the Attorney General under the former *Administration of Estates by the Attorney General Act* and upon the Administrator of Estates and the Attorney General under the former *Official Administrator of Estates Act* and all contracts entered into by the Attorney General or the Administrator of Estates, or both, pursuant to the provisions of those Acts and all proceedings taken pursuant thereto.

(8) All property vested in the Attorney General or the Administrator of Estates, or both, pursuant to the provisions of the former *Administration of Estates by the Attorney General Act* or the former *Official Administrator of Estates Act* is hereby vested in the Public Trustee to be dealt with by him according to law. R.S., c. 379, s. 29.

#### **Investment of moneys in hands of Public Trustee**

30 (1) Money for the time being in the hands of the Public Trustee, not being money subject to any express trust or direction for the investment thereof, may be invested by the Public Trustee in a common fund or in any one of several common funds kept and controlled by the Public Trustee.

(2) An investment made pursuant to subsection (1) shall not be made on account of or belong to a particular estate.

(3) The interest of a person entitled to a share or interest in a common fund referred to in subsection (1) is in common with the other persons so entitled.

(4) The Governor in Council

(a) may make regulations for the management of a common fund; and

(b) may prescribe the fees which for the management of the common fund may be charged against the fund and against the persons entitled to the fund. R.S., c. 379, s. 30.

**Rate of interest on money in common fund**

**31** (1) The interest payable in respect of the estates on the money which forms the common fund shall be at such rate as the Governor in Council may prescribe.

(2) Interest shall be credited to the respective estates at the authorized rate half-yearly, namely, on the thirtieth day of April and the thirty-first day of October in each year, and shall be calculated upon the minimum quarterly balance of the money that forms the common fund.

(3) The common fund shall be invested in investments authorized by the *Trustee Act* and not otherwise.

(4) For the purpose of distribution

(a) the investments in the common fund shall be deemed to be of the same aggregate value as the aggregate amount of the money invested in the fund; and

(b) no regard shall be had to a fluctuation in value or price of the investments of the common fund. R.S., c. 379, s. 31.

**Special reserve fund**

**32** (1) When the income earned by the investments of the common fund exceeds in any half-year the amount of interest payable in respect of the estates invested therein, the amount of the excess income shall be paid into a special reserve fund.

(2) Where investments in the common fund when realized produce a greater sum than the money invested in the fund, the surplus shall be paid into the special reserve fund if, at that time, the aggregate market value of the investments in the common fund is equal to or greater than the aggregate amount of money invested in the fund.

(3) The special reserve fund shall be available for the purpose of making up

(a) any deficiency between the income of the investments of the common fund during a half-year and the amount required to pay the interest payable in respect of the estates in the fund; and

(b) any deficiency between the aggregate amount of sums invested in the common fund and the realized value of the investments of the common fund.

(4) The special reserve fund shall be held by the Public Trustee jointly with the Deputy Minister of Finance and all securities in the fund shall be so registered.

(5) Money in the special reserve fund may be invested in securities authorized by the *Trustee Act* for the investment of trust funds.

(6) The Province hereby guarantees that the common fund together with the special reserve fund will be sufficient for the purpose of paying lawful claims that are payable out of the common fund pursuant to this Act.

(7) The Minister of Finance is hereby authorized to pay out of the Consolidated Fund of the Province such sums as are necessary to implement the guarantee referred to in subsection (6).

(8) Income earned in respect of the securities held in the special reserve fund shall be paid into and form part of the special reserve fund.

(9) Notwithstanding subsection (8), the Public Trustee and the Deputy Minister of Finance may out of the income earned on the special reserve fund and received by them pay to the Minister of Finance to form part of the general revenue of the Province annually such sum of money as may be determined by the Public Trustee and the Deputy Minister of Finance.

(10) The sum of money paid under subsection (9)

(a) shall not exceed the annual interest earned in respect to the securities held in the special reserve fund; and

(b) shall be applied toward the cost of administration of the common fund and of the special reserve fund and the administration of this Act. R.S., c. 379, s. 32.

#### **Unclaimed property belongs to Crown**

33 All property in the hands of the Public Trustee to which no person is entitled or to which a missing person is entitled and is not claimed by that missing person within seven years from the date of receipt by the Public Trustee is the property of Her Majesty in right of the Province and shall, at the direction of the Governor in Council, be converted into cash and paid to the Minister of Finance and credited by him to the Consolidated Fund of the Province. R.S., c. 379, s. 33.

#### **Sale of real property of estate of deceased**

34 (1) Where the Public Trustee is administering or has administered the estate of a deceased person pursuant to the provisions of this Act or the *Probate Act* and six months have expired from the date of his appointment or election as administrator and it is made to appear to the Governor in Council that

(a) the deceased died entitled to real property in the Province or an interest therein;

(b) the provisions of the *Probate Act* respecting the sale of property to pay debts do not apply; and

(c) there are

(i) no known heirs of the deceased, or

(ii) known heirs of the deceased not resident in the Province and attempts to communicate with them were not successful or that it is impracticable to obtain their signatures to a conveyance or release and it is in their interest that real property or an interest therein be sold or an interest therein be released,

the Governor in Council may grant and direct the sale by auction or private sale of the said real property or any interest therein or that an interest therein be released, subject to such terms and conditions as he may direct, and the Public Trustee is thereupon authorized to sell in accordance with the directions of the order in council the whole or any part of the real estate or interest therein and convey it to the purchaser or to release the interest therein and execute a release, and every such conveyance or release by the Public Trustee is as valid and effectual as if the deceased were alive at the time of its making and had executed it.

(2) The proceeds from the sale of such real estate or interest therein or the consideration for the said release shall be property in the hands of the Public Trustee within the meaning of Section 33. R.S., c. 379, s. 34.

#### **Limitation period for money held by Minister**

35 (1) Any person claiming to be entitled to any money held by the Minister of Finance under this Act or to any interest therein may make application to the Supreme Court or a judge thereof for a judgment or order declaring his rights in respect thereto

(a) if a claim thereto is made within ten years next after the same has been paid over to the Minister of Finance; or

(b) where the person entitled to such money is under the age of nineteen years or of unsound mind or out of the Province, a claim thereto is made by such person within ten years next after his coming to or being of full age, of sound mind or returning to the Province, and in any event within forty years next after the same has been paid to the Minister of Finance,

and the Court may direct such inquiries as may be necessary to determine the same and may finally adjudicate thereon but no such application shall be entertained unless security for costs is given by the applicant if the Public Trustee demands the same.

(2) Where the Supreme Court or a judge thereof has determined that a person is entitled to money held by the Minister of Finance or any part thereof, he shall pay the same to that person with such interest as the Governor in Council shall direct.

(3) Where the Governor in Council is satisfied that any person should receive any money referred to in subsection (1), the Governor in Council may authorize the Minister of Finance to pay such money to such person with such interest as he shall deem fit. R.S., c. 379, s. 35; R.S., c. 240, s. 10.

**Authority of Minister to distribute**

**35A (1)** Where, on application under subsection (1) of Section 35, the Supreme Court or a judge thereof is satisfied that

(a) a person who, if living, would be entitled to any money held by the Minister of Finance, is absent from the Province and has not been heard of or from by the applicant, or to the knowledge of the applicant by any other person, since a day named;

(b) the applicant has no reason to believe the person is living; and

(c) reasonable grounds exist for believing the person is dead,

the Supreme Court or a judge thereof may authorize the Minister to distribute the money among such persons who would be entitled to the money if the death of the absent person had taken place immediately before the time at which the application was made in accordance with subsections (2) and (3) of Section 35.

(2) Before the money is distributed pursuant to subsection (1), there shall be given to the Minister of Finance security in such amount and in such form as is prescribed for the payment or re-delivery of the money to the absent person if the absent person returns, or in case of the death of the absent person being proved to have taken place at a time other than that immediately before the application, then to the persons entitled to the same by reason of the death having taken place at such other time.

(3) Nothing in this Section limits or abridges the remedies to which the absent person, or any other person entitled thereto, may resort to for recovering the money from the persons among whom the Minister of Finance has distributed the same, but the Minister is relieved from all further liability in respect to such money. 2002, c. 38, s. 2.

**Appointment of another to take out administration**

**36 (1)** Where in any case the Public Trustee is entitled to take out letters of administration under this Act, he may authorize and appoint by writing under his hand some other person to take out such letters of administration.

(2) The court of probate shall, upon the application of a person so authorized and appointed by the Public Trustee as aforesaid, grant to such applicant letters of administration.

(3) The person so appointed shall give security for the performance of his duties in such manner and such amount as the Public Trustee shall require. R.S., c. 379, s. 36.



**Power to approve accounts of trustee or guardian**

**37 (1)** Notwithstanding the provisions of the *Trustee Act*, a trustee or guardian may have his accounts settled and approved by the Public Trustee instead of by the court or a judge.

**(2)** Where any application is made to the Public Trustee pursuant to subsection (1), the Public Trustee may settle and approve such accounts, award such remuneration and give such discharges to the same extent and effect as the court or a judge is authorized so to do by the *Trustee Act* and the *Civil Procedure Rules*. R.S., c. 379, s. 37.

**Inquiry into escheated or forfeited property**

**38** The Public Trustee, at the request of the Attorney General, shall make inquiries from time to time as to property that has escheated, or become forfeited for any cause to the Crown, or in which the Crown in right of the Province may have an interest, and every person when required by the Public Trustee shall furnish him with such information as he requires, and in default of so doing is guilty of an offence and on summary conviction is liable to a fine of not more than one hundred dollars, which fine shall be paid over to the Public Trustee. R.S., c. 379, s. 38.

**Public Inquiries Act**

**39** For the purposes of an inquiry under Section 38, the Public Trustee has all the powers and immunities that are conferred upon a commissioner under the *Public Inquiries Act*. R.S., c. 379, s. 39.

**If judgment against Public Trustee**

**40** If a judgment is obtained against the Public Trustee in respect of any act or omission by him in the course of exercising any power, duty or function which he is authorized to exercise by this or any other Act, then to the extent that the judgment is payable by the Public Trustee and is not payable out of any estate, the judgment shall be deemed to be a judgment against the Crown in right of the Province to which the *Proceedings against the Crown Act* applies. R.S., c. 379, s. 40.

**No security by Public Trustee**

**41** Notwithstanding a rule of practice or the provisions of an Act requiring security, the Public Trustee is not required to give security for the due performance of his duty as guardian, custodian, executor, administrator or trustee, or in any other office to which he is appointed by order of a court or under the provisions of this or any Act. R.S., c. 379, s. 41.

**Rules and regulations**

**42** The Governor in Council may from time to time make rules governing the practice and procedure in the office of the Public Trustee and charges to be made by him for services including, without restricting the generality of the foregoing, those performed pursuant to Section 37 and regulations to carry out the intent and purpose of this Act. R.S., c. 379, s. 42.

**Annual estimate and payment from Consolidated Fund**

**43** (1) The costs and expenses incurred by the Public Trustee or in the administration of this Act may be paid out of the Consolidated Fund of the Province.

(2) The Governor in Council, on the recommendation of the Minister of Finance, may authorize the Minister of Finance to advance from time to time to the Public Trustee by way of temporary loan from the Consolidated Fund of the Province such sums of money for such period and upon such terms and conditions as are deemed requisite for the advantageous administration of an estate being administered by the Public Trustee pursuant to this Act.

(3) The Public Trustee shall prepare annually an estimate of the sums required to be provided by the Legislature for the carrying out of this Act during the fiscal year, which estimate shall be transmitted to the Attorney General for his approval, and the estimates approved shall be laid before the Legislature with the other estimates for the year. R.S., c. 379, s. 43.

**Annual audit**

**44** The Auditor General shall make an annual audit of the books, accounts and vouchers of the Public Trustee. R.S., c. 379, s. 44.

**Costs and fees**

**45** (1) The Public Trustee is entitled to the same costs and fees as are payable to counsel and solicitors when he acts as such.

(2) The costs and fees referred to in subsection (1) are liable to taxation, and shall be in the discretion of the court.

(3) The court or judge may

(a) order that the costs and fees referred to in subsection (1) be paid out of and form a charge on the estate; or

(b) order any other party to the proceeding or application or any other person not a party to the proceeding or application to pay the costs and fees thereof. R.S., c. 379, s. 45.

**Costs and fees form part of Consolidated Fund**

**46** Costs and fees received by the Public Trustee form part of the Consolidated Fund of the Province. R.S., c. 379, s. 46.

**Annual report and tabling**

**47** The Public Trustee shall, within thirty days of the end of each year, present a report to the Attorney General concerning matters contained in this Act, and the Attorney General shall cause the report to be laid before the House of Assembly within thirty sitting days after the receipt thereof, or, if the House of Assembly is not then sitting, on any of the first thirty days next thereafter that the House is sitting. R.S., c. 379, s. 47.

**Secrecy of information**

**48** Every person employed in the performance of the duties imposed upon the Public Trustee by this or any other Act or by the Governor in Council shall preserve secrecy with respect to all matters that come to his knowledge in the course of such employment and shall not communicate any such matters to any person other than to a person legally entitled thereto or to his legal counsel except as may be required in connection with the administration of this Act and the regulations or any proceedings thereunder. R.S., c. 379, s. 48.

**Regulations Act**

**49** The exercise by the Governor in Council of the powers contained in subsection (4) of Section 30 and in Section 42 shall be regulations within the meaning of the *Regulations Act*. R.S., c. 379, s. 49.

**SCHEDULE****Form**

(Section 17 (3))

Province of Nova Scotia)  
County of .....

In the estate of .....  
..... deceased

I, ..... of ..... make oath and say that the foregoing paper writing contains a true and correct account of my demand against the estate of ..... deceased, and that all of the credits to which the deceased was honestly and justly entitled, so far as I believe, have been given on the said account; and that amount of ..... is justly and truly owing to me, (and that I hold security in respect of the said demand or and that I do not hold security in respect of the said demand as the case may be).

Sworn before me at .....,  
in the County of .....,  
this ..... day of ....., 19.....,

.....

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R.S., c. 379, Sch.

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